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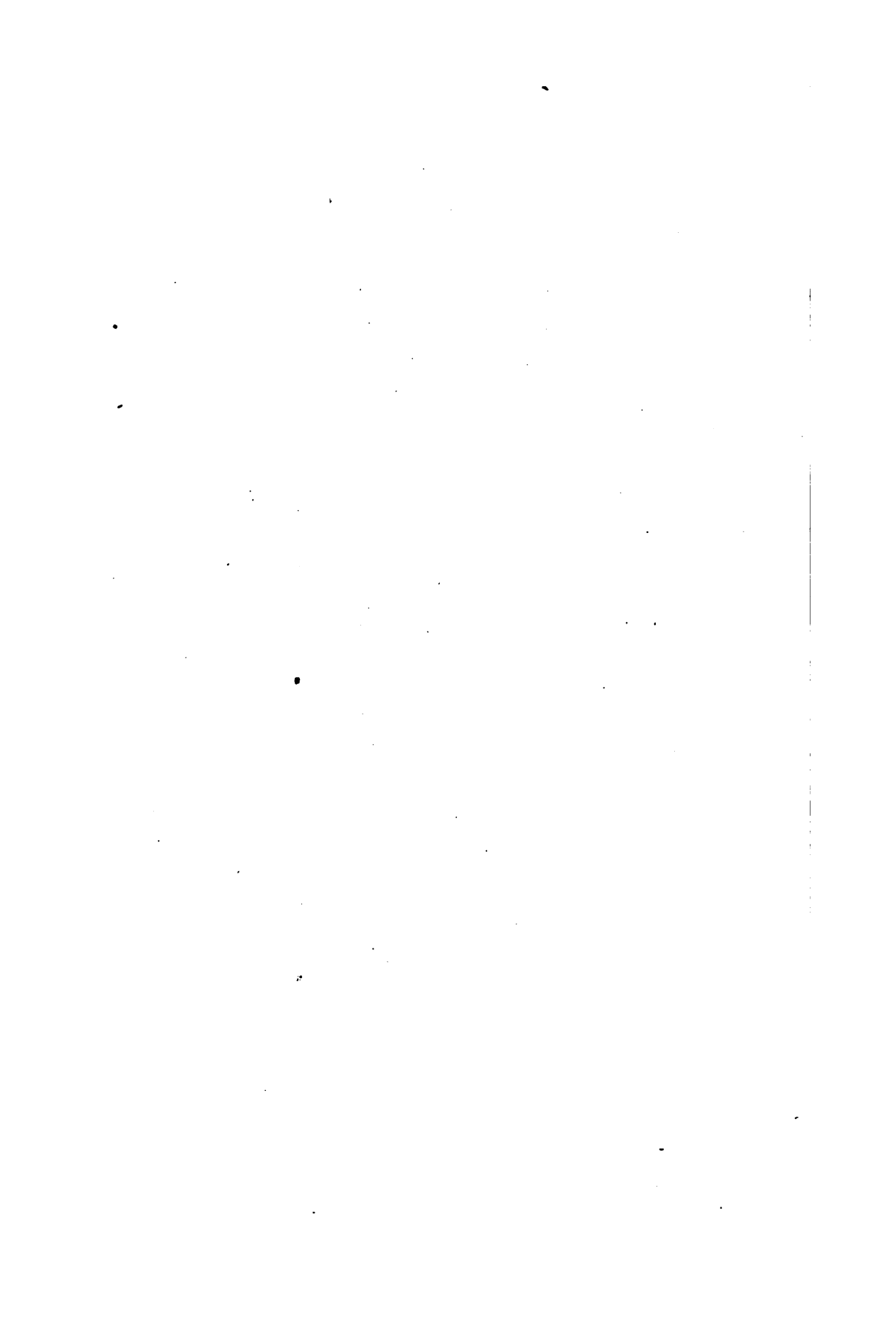
STATEMENTS AND ARGUMENTS FOR CLAIMANTS
AND FOR THE REPUBLIC,

AND

OPINION AND AWARD OF COMMISSIONERS

WASHINGTON:
HENRY POLKINHORN, PRINTER.
1860.





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CONTENTS.

	PAGE
OPENING STATEMENT FOR CLAIMANTS	1
OPENING STATEMENT FOR PARAGUAY	9
ARGUMENT FOR CLAIMANTS	15
ARGUMENT FOR PARAGUAY	78
OPINION OF THE AMERICAN COMMISSIONER	105
AWARD OF THE COMMISSIONERS	138
DECREE RELATIVE TO PATENTS, MONOPOLIES, &c. . . .	139
LETTER OF MR. GELLY	143
APPENDIX	147

THE
OPENING STATEMENT FOR CLAIMANTS:

BY HON. JOHN APPLETON.

The United States and Paraguay Navigation Company, in presenting their claim against Paraguay before this commission, will first call the attention of your Honors to the inducements to their enterprise; then to the amount of their investments, and to the value of the rights acquired thereby. For, the liability being determined, the amount and value of the property and claim is the subject of inquiry before this tribunal.

They were induced to commence their efforts by their knowledge of the vast and undeveloped resources of Paraguay and of the neighboring provinces of Brazil and Bolivia, watered by the confluents of the La Platte, and with which, in addition to the published sources of information, they had become acquainted through the travels in Central and South America, of their President, Governor Arnold, of Rhode Island, and the residence in Paraguay for nine years of their agent, Mr. Hopkins, who had, during that period, sustained the most friendly relations with President Lopez, and had become well acquainted with the country.

But the special inducements were the public decrees and laws of Paraguay, which invited foreigners to develop her resources, by the offer, among others, of grants or privileges, in the nature of patent rights for a term of years to all who should first introduce into that country any implements or processes of manufacture not before in use therein; which laws had been applied by the letter of Mr. Gelly, Secretary

of State of Paraguay, while on a special mission to Brazil, to Mr. Hopkins, our agent, to an enterprise like ours. A copy of the laws of Paraguay granting these privileges, and proffering these inducements, with a translation of the same, and the original letter of the said Secretary of State, with a translation, is herewith presented.

With these inducements, the company commenced its enterprise, and expected to establish in Paraguay, and between that country and the United States, a great and permanent business. In order to do so with greater facility, they obtained a special charter from the Legislature of the State of Rhode Island, where most of the stockholders resided. The charter authorizes the creation of a capital of \$1,000,000, and the issue of bonds for the same amount. A copy of the charter is hereto annexed.

Though the enterprise had but commenced, yet the actual expenditures and losses, with interest calculated at less than the rates paid by the company, amounts at this time, after deducting all returns, to \$402,520.37.

The nature of this expenditure, was chiefly in the cost and equipment of steamers and other vessels sent to Paraguay, machinery and implements sent to that country, land and buildings purchased there, and the salaries and wages paid to their employés.

A portion of this loss arises from the sale of bonds at less than par, and much of this sacrifice arose from the necessity of meeting the obligations of the company, after their hopes and credit had been depressed, by the action of Paraguay. And at all events, the company must pay the entire amount of these bonds, and by the payment to them from Paraguay of this entire amount of more than four hundred thousand dollars, they would only be reimbursed that which they have expended, and for which they are liable. Such is the rule adopted in the payment of obligations incurred by one State or company, for which another is liable, as in the case of the bonds of the State of Maine issued in the Aroostook war. The United States paid the amount of the bonds, and also the discount or loss which Maine suffered when she sold the bonds. For thus, and thus only, could she be made whole.

The items of such expenditure and loss are shown in the accompanying account marked A, with its supplements.

The correctness of this account, and of the statements therein, will be shown by the books of the company, the oaths of its officers and agents, and the testimony of other

persons who had means of information on the subject, as far as may be thought necessary.

After having established themselves in the country, commenced the erection of valuable works there, such as saw-mills, cigar factories, &c., sent out small steamers to navigate the upper waters of that region, which were built by them expressly for that purpose, and when the second expedition had just arrived at the mouth of the La Platte, the company were broken up in business and driven from the country by decrees and acts on the part of Paraguay, which, it is admitted, by the proceedings of the Government and by the treaty, were wrongs which required the most complete redress. (See President Buchanan's message of 1857-'8, with report and accompanying documents from Senate Committee of Foreign Affairs, 36th Congress, 1st session, No. 60, and from House Committee of Foreign Affairs, same Congress, No. 365, and the official acts of Congress thereon; the instructions of the Department of State to Mr. Bowlin, and the treaty and convention by which Paraguay agrees to pay the just amount of the claim of the company, to be ascertained by this commission.)

For the actual expenses and losses already mentioned, as well as for the money expended in attempting to procure a reasonable reimbursement therefor, the claim of the company will doubtless be admitted by all parties.

Equally just, we think, is the claim which it makes to be indemnified for the value of the position of which it was wrongfully deprived by the act of Paraguay. Its outlay was not only money, but intelligence, investigation, time, enterprise, risk, anxiety; and these go to make up the actual investment which created the position.

The precise figures of this branch of the claim it would be difficult to specify, but the justice of such claims is recognised in all jurisprudence, and the measure of such damages is determined by the discretion of the tribunal. The Supreme Court of the United States has held that in the case of a wrong, where the wrong doer himself, as in this instance, is the party before the commissioners, damages are not limited to the mere cost or value of the property wrongfully destroyed. (See 3 Wheaton, 546.)

Another branch of the claim arises from the destruction of grants made by the law of the country, in the nature of patents for the machinery and processes first introduced into Paraguay. The company sent to Paraguay the following

articles, many of which were before unknown in that country, and to which they were entitled to a monopoly for a term of years:

1 steam engine	1 cheese press
2 Miner bee hives	1 Geddy's harrow
1 Fall's largest brick machine	4 dozen Markham's hoes
1 bark mill	5 dozen weeding hoes
2 18-saw hand gins	24 dozen Markham large hoes
1 16-inch hand burr mill	8 Nos. 18 & 19 polished plows
2 rice hullers	2 No. 20 Dfk. w. and c. plows
1 portable saw mill	1 No. 1 D. mould plow
1 Taplin's largest power, (a machine by which horse-power can be applied to many kinds of machinery and labor)	1 No. 3 D. mould plow
8 corn shellers	3 road scrapers
1 planing machine, and a complete set of circular saws. (No more profitable machine ever patented in the United States, and the great occasion for its use in Paraguay or any other country is obvious.)	2 dozen spades, Rould
1 3-roller sugar mill	2 dozen shovels, (Day's)
1 Dick's patent anti-friction hemp press, which took first premium at London exhibition.	2 carpenters' tool chests
1 paper-cutting machine	12 dozen axes, (Simmons')
Mode of making cigars, peculiar to us in that country, and introduced by us.	1 dozen axes, with handles
1 canal barrow	17 dozen cane knives
1 mule car and harness	1 dozen grain sickles
6 scythes and snaths	6 dozen handsaws
2 grain cradles	6 dozen scythe-stones
3 thermometer churns, (new patent)	12 ox-yokes, complete
	3 platform scales, (300, 500, and 1,000 pounds)
	18 sugar boilers, (3 each 25, 30, 40, 50, 60 and 80 galls.)
	6 sets blacksmiths' tools
	1 copper still
	1 set brickmakers' tools
	3 assorted screw wrenches
	6 anvils
	6 vises
	17 varieties of clocks and time pieces, 8 day to common 24 hour
	2 salamander safes
	Stoves, No. 1 to 5, inclusive
	1 melodeon

All the foregoing were actually landed by this company in Paraguay.

In addition, they sent per schooner E. T. Blodgett, a saw-mill of eight stand saws, and one large cotton gin complete. For the latter we do not claim, ours not being the first in Paraguay.

To illustrate the value of some of these, we will consider, first, the peculiar Cuban method of manufacturing cigars, including its chemical process. We had put in operation under that method a cigar factory employing at the time it was closed 115 operatives, who would make three hundred per day each, or per month of twenty-six working days, 7,800, making the product of 115 operatives, 897,000 cigars per month.

The cost of these cigars in Paraguay was \$2.50 to \$3 per thousand, and sold at the factory, for even inferior descriptions, at \$10 per thousand, leaving a clear profit of \$7 per thousand—equivalent to \$6,279 per month, and \$74,548 per year, and for ten years, \$745,840!

These cigars, made by these inexperienced operatives, sold in the United States at \$20 and \$30 per thousand, of the highest grades and price. The whole was readily sold, and a demand for more than we could supply; and even as high as \$35 per thousand was offered. Say, then, best cigars cost in Paraguay \$4 per thousand, and \$4 per thousand freight and duties (ad valorem,) they would yield our company in the United States a net profit of \$22 per thousand.

It may be safely estimated that as the operatives became more experienced, they would produce a better article, and largely increase the quantity. If, then, we estimate the profits of this peculiar mode of manufacture, (since adopted by President Lopez,) at \$22 per thousand instead of \$7, we have the result of \$236,808 net profit per annum, and for ten years, \$2,368,080, with 115 operatives. Now, what would be the value of such exclusive privileges, from which such results could be obtained?—the exclusive privilege for a manufacture which could be limited only by the possible production of tobacco in Paraguay, and the demand for cigars in the markets of the world.

The company had in operation the first and only steam saw mill in that country, and at the time of our interruption by the government of Paraguay produced 700 feet, or 247 Spanish varas, per day; valued at the mill at 50 to 62 cents per vara, is \$123.50. The cost of logs in South Carolina or Maine, with labor at \$1 per thousand to produce the above

quantity, would be \$5, and labor of sawing \$2.75, making the whole cost of 700 feet per day \$7.75 only, leaving a clear profit of one saw, \$115.75 per day; 300 working days per annum would yield \$34,725 net profit of one saw per year, and for ten years, \$347,250. Encouraged by these immense results, the company sent out in their second expedition a gang of eight saws, which were stopped at Buenos Ayres, in consequence of the difficulties and seizure of our property in Paraguay.

Accompanying this second expedition, was a skillful millwright to erect and operate this gang of eight saws. With the nine saws in operation, we should have realized, for ten years' monopoly, vast sums of money.

Buenos Ayres, at the mouth of the river, is one of the largest lumber markets in the world, and largely supplied from the United States. What, then, would be the value of such exclusive privilege for ten years of operating steam saw-mills in the manufacture of lumber from the forests of Paraguay, and the adjacent countries?

The company had also a brick machine at their establishment at San Antonio, and of the largest size; one day's product of which would be 10,000 bricks. The cost in the United States, with labor at \$1 per day, and wood at \$5 per cord, would be \$4 per thousand. The value in Paraguay was \$20 per thousand and upwards; this would leave a profit of \$16 per thousand, or \$160 per day for this single machine. Allow 200 working days per annum, and we have \$32,000 per annum, and for ten years, the sum of \$320,000.

Many of the brick-makers in the United States run from twenty to forty of their machines. Now, what would be the value of the exclusive right to run enough of their machines to supply the demands of the whole of Paraguay?

We claim to have introduced for the first time the steam engine in Paraguay. What is the value of such power in a country without water-power excepting that upon the estate owned by this company?

This is a country in which monopolies are not novelties, many of the most important productions and branches of business being under the control of President Lopez, the principal bankers and merchants of Paraguay; and the inquiry is not as to the probability of the use of any of these machines and implements, and modes of manufacture solely by the natives of Paraguay, but of their value when used by us or by the citizens of the commercial nations which have

formed treaties with Paraguay, and regard it as one of the most productive fields of future commercial development. (See Page's report.)

Incidental to these privileges, our position, if understood, would have given us much of the very profitable commerce of Paraguay, and the steam navigation of the many confluents of the La Platte, for which special purposes we built and sent out two steamers, one of which was employed by Captain Page in his explorations, and this commerce and this navigation would lead also to that of the rich provinces of Brazil above, and of Bolivia, which has offered the most liberal inducements, with great and peculiar privileges, to those who shall open to her the communication to the Atlantic.

If our ideas upon this subject seem extravagant, they are those we held in common with the most intelligent merchants and statesmen of Europe. (See Page's report, page 37.)

After all our experiences in that country, the convictions which induced us to expend our money in this enterprise have been strengthened, and we believe that if the plans we formed, based upon the public decree of President Lopez, had been fairly developed, we should have realized, in the developments which the implements of our American civilization would have produced in the heart of South America, a wealth akin to that which the great commercial companies of Europe have realized in the East Indies.

We have given in this paper but illustrations of the value of a portion of these rights. The value of all of them, in the view here taken of the subject, may safely be left to the judgment of the commission.

The commissioners will perceive that we claim redress for the admitted wrongs of President Lopez toward our company and its agents, and that redress cannot be full and just unless the company are made whole for the money they have expended, and for which they are liable.

That beyond this expenditure, we are entitled to a reasonable allowance for the expense of procuring redress for these wrongs.

We are entitled also to compensation for time, labor, anxiety and suffering expended and incurred in the enterprise; to damages for the wrongfulness of the acts of expulsion; and finally, to compensation or an equivalent for the patent rights or grants and franchises bestowed upon us by the laws of the country, and leading inducements to our enterprise, which

were abrogated by the wrongful acts of President Lopez. The amounts of these latter sums are, from their nature, discretionary. The data to estimate them we place before the commission, and we respectfully submit that, judicially determined, the award would exceed the sum which the company have always, and in every form, claimed as less than their real right—one million of dollars.

JOHN APPLETON.

THE
OPENING STATEMENT FOR PARAGUAY:

BY JAMES M. CARLISLE, Esq.,
COUNSEL FOR THE REPUBLIC.

On the part of the Republic of Paraguay, the counsel does not propose to extend this opening statement beyond the exigency of the rule adopted by the commission in this behalf. Its scope is simply to indicate the grounds upon which he will rely in resisting the pretensions of the claimants, and which it will be his duty to support by proofs and arguments hereafter.

I. The counsel for the claimants assume, as a foregone conclusion, that wrong and injury, in the transactions upon which this claim is based, have been done by the Republic of Paraguay.

This is utterly denied. And it will be respectfully insisted that it will be for this honorable commission not to take for granted, but to require to be here proven and established, in fact and law, the allegation that, by reason of any matter or thing done or permitted by the Republic of Paraguay in the premises, any responsibility in damages to these claimants rests upon it.

This commission is organized under the law of nations, and the terms of a treaty or convention between sovereigns of equal dignity in the view of that code. The instructions given by one of these high contracting parties to its minister, its executive messages, the reports of committees, or other proceedings of its legislature, referred to in the opening

statement, can have no other weight or value than as exhibiting, in an imposing form, the claim which is here made, and is here to be established or rejected. They are not even entitled to be regarded as the deliberate conclusions of the government from whom they emanate, since they are founded exclusively upon the case as made *ex parte*, by those whose interests and feelings may have naturally colored their representations. By the solemn act of the United States, in entering into this convention, it is stipulated that this claim shall be here "*investigated*" and "*adjusted*," AND "*its amount determined*," "*upon sufficient proof of the charges and defences of the contending parties.*" (Convention, Art. II.)

II. As to any inducements held out by the Republic of Paraguay for the enterprise of the claimants, they are to be found in the general law of the Republic, an unofficial copy of which is now exhibited for information, and a duly authenticated transcript of which will be adduced in proof. It is denied that these claimants acquired any rights of patent or monopoly for ten years, or for a single moment, under that law, or in any manner whatever. If they had such rights, it will be perceived that the law prescribes the specific and appropriate evidence of them, upon the issuing of which alone could they be exercised or enjoyed. The production of this evidence is respectfully required.

As to the letter of Mr. Gelly, which the claimants rely on as giving a construction and application of this general law, it is admitted to be a genuine letter of that gentleman, his handwriting being recognised by the Paraguayan commissioner. But Mr. Gelly never was Secretary of State, nor did he ever hold any office under the government of Paraguay, except that of special commissioner to treat concerning boundaries between that Republic and the Empire of Brazil, upon which duty he was engaged at the date of that letter. The letter itself purports, upon the face of it, to be a mere private letter, bears date in the year 1848, and expressly refers Mr. Hopkins to the above-cited general law, as governing the whole subject of exclusive rights and patents, and informs him, in so many words, that it would "*neither be just nor possible to make an exception*" in his favor. But if that letter were all that it has been represented to be, it could have no effect to dispense with the requirements of the law, or to give it an authoritative construction.

III. It is denied that the agents of the company were expelled from the Republic, or that the business of the company was interrupted, or disturbed, or interfered with, otherwise than in due execution of the laws of the land, to which they had voluntarily subjected themselves, and from which they could not, upon any principle known to the law of nations, demand exemption. In this connection it will be the duty of the undersigned to exhibit the conduct of the general agent of the company in a light which would surely have been disapproved by the respectable gentlemen whose interests he so recklessly jeopardized by his bad faith and his absurd and arrogant pretensions. And it will appear in the evidence that the most extraordinary favors were extended to him, and through him to them, by President Lopez, until to have continued them longer would have been to disgrace that distinguished personage and the State of which he is the head. Connected with this point, it is proper that a remark should be made upon those passages of the opening statement which represent President Lopez as wielding the high powers of government for the infamous purposes of his own private traffic and gain. These are pure inventions of Mr. Hopkins. They are utterly denied. President Lopez is neither "merchant," nor "banker," nor "cigar maker." Honorable as those employments are in themselves, he has never exercised either of them, nor does he derive his revenues from any other sources than the abundant salary which the law annexes to his office, and from estates which he possesses and enjoys in like manner as other private proprietors. Bred to the law, the productions of his own pen, which the undersigned has had the advantage of seeing, show him to be an accomplished scholar and a man of enlightened and vigorous intellect; while the concurrent testimony of all who have had personal intercourse with him (among whom may be mentioned, as here present, the secretary of this board, while secretary of legation to that Republic) ascribes to him the essential characteristics of a high-toned and honorable gentleman. The history of his country, since he has been entrusted with its government, attests his ability and enlightened patriotism.

IV. If it shall be held by the honorable commission, that the Republic of Paraguay is liable in damages upon any of the heads which have been adverted to, it will be respectfully insisted that the amount of damage so actually sustained shall

be made out by clear and distinct proofs of values, and of all other facts entering into such computation. The undersigned totally dissents from the mode of ascertaining this result which is foreshadowed in the opening statement. Without going into any argument, (which more properly belongs to a subsequent stage of the case,) he thinks it proper to say: *First*. That he will maintain that no prospective, conjectural, or speculative damages can be allowed in any form. Nor does his mind apprehend the distinction indicated orally by the learned counsel who read the opening statement between the demand for prospective profits, *eo nomine*, (which was disclaimed,) and the demand for a pecuniary satisfaction, which shall indemnify the claimant for not receiving those prospective profits, which, being an indemnity, must of course equal those profits. *Secondly*. He wholly dissents from the mode proposed to ascertain the investments of the company, and he disputes the items of the account, (Exhibit A, with the statement,) one and all. He denies that the measure of damages is to be in any degree affected by the amount of those investments, as mere investments, made in the United States, the results of which never came within the territory of Paraguay. Still less can he admit that compensation is to be made for "intelligence," "enterprise," (in the abstract,) and "anxiety of mind generally." As to expenses incurred in procuring justice through the intervention of the United States government, of course the vouchers of any such expenditure must exist, and will be produced, if that inquiry is to be entered upon.

Without going into particulars, it may be sufficient to say, by way of example, that the first and principal item of the paper A, (\$90,031 05,) and the second in magnitude, (\$24,819 72,) = \$114,850 77, are for a steamer which was wrecked, without any apparent combination between President Lopez and the elements, and which never reached Paraguay; and for her cargo, and that of another vessel, which never came within that jurisdiction.

Again, and for example also: it is not perceived how the Republic of Paraguay is to be held responsible for the difference between the par value of the bonds issued to raise the capital of the company and the minor sums which, with more or less faith in the speculation, people were willing to pay for them. Further: it is not perceived upon what principle it is that, in addition to this, the capital raised is to be assumed to have been borrowed by the company upon an agree-

ment to pay interest semi-annually; and this being assumed, that there are to be semi-annual rests, and the interest compounded, as against the Republic of Paraguay.

Proofs will be offered of the importations actually made by the company, and of their value and disposition. It will also be shown in evidence that a sum of \$10,000 was loaned to Mr. Hopkins, for the use of the company, by the government of Paraguay, to relieve them from pressing wants and embarrassments, in the very beginning of the enterprise, which sum, with interest, remains unpaid, except so far as the value of property abandoned by the company (of which a strict account will be produced) may be applicable thereto. The "lands" which figure so largely in the complaints of the company, will be shown to have been procured upon a void title, for the price of seventy or eighty dollars; the "cigar factory" to have been likewise of insignificant value. The saw-mill, however it may have been estimated as a "potentiality of wealth," in fact never paid its own expenses. In short, whatever reports or representations may have been made to the gentlemen who were induced by Mr. Hopkins to enter into this speculation, the whole affair was a mere bubble, which never could have resulted, even in the hands of the most judicious and skillful agent, in the realization of the enormous products which this honorable commission is invoked, by the opening statement, to consider as certain fruits wrested by a wrongdoer from the actual grasp of the claimants.

Upon this subject of amounts, it may be remarked that the paragraph with which the opening statement concludes, may well excite surprise in those who have perused the several memorials presented to the government of the United States by these claimants, and which exhibit the truly tropical luxuriance with which their pretensions have grown. To say that the company have always, and in every form, maintained that their claim exceeded a million dollars, appears, in view of these documents, to be an inadvertence. Certain it is, whether by authority of the President or not, that a proposition was made, through General Urquiza, (who in communicating it, tendered a loan from his government to that of Paraguay,) to settle the demand for the sum of \$500,000. This proposition was declined, but was followed by the offer from President Lopez of a much smaller sum, (probably about half that amount,) which offer was made from motives which concerned the tranquility of the Repub-

lic, and from a desire to prove to the United States his determination to preserve, by all reasonable sacrifices, a friendly intercourse with this government and people. But the matter having now taken the public and solemn form of a convention between two nations, these offers of compromise on either side are as if they had never been. It has now become a question of strict right, to be determined with judicial certainty.

All which is respectfully submitted,

J. MANDEVILLE CARLISLE,
Counsel and Agent for the Republic of Paraguay.

WASHINGTON, *June 27, 1860.*

ARGUMENT FOR CLAIMANTS:

BY HON. JOHN APPLETON AND C. S. BRADLEY, Esq.

This is a case of wrong and injury done by the government of Paraguay to citizens of the United States. It is only in cases of wrong that this government will interpose. In other cases, its good offices are sometimes employed, but it never makes a demand, or employs force, unless a wrong has been done. This is its settled policy.

In this case, the wrong is beyond question. It appears from the memorials of the company, from the recorded judgments of the Department of State under two administrations, from the messages of the President, from the solemn action of both branches of Congress, and from the treaty itself, which assumes the wrong, and constitutes a commission to assess the damages.

It is a peculiarity of this commission that it is formed with reference to a single case and for a single purpose. Ordinarily, a claims commission is authorized to consider and determine all such claims of a certain character as may have been presented within a given time. In such cases, the treaty assumes only certain general facts, such as the previous existence of a war, the appropriation of a sum of money, or some general principle of liability. Neither of these assumptions would be inquired into by a commission. In this case, the whole subject matter of the negotiation which led to the treaty having been a single claim, it was easy to make the convention definite, and to confine the duties of the commission to a single point. This has been done. The treaty assumes the wrong committed, and the liability of Paraguay,

and only authorizes the commissioners to assess the amount of damages. It is a simple question of, how much?

If there was any ambiguity in the convention on this point, it could not fail to be removed by a reference to the proceedings which led to the convention.

The first application of the company to their government was dated January 15, 1855, and requested that "such measures may be taken as to me [the President] may seem meet and proper, to demand of the government of Paraguay, and enforce the payment, as indemnity for our losses and the destruction of our business in that country, the sum of \$935,000."

The statement of Mr. Gallup (see his letter to Mr. Bradley, of July 8, 1855) shows that Mr. Marcy, the Secretary of State, "although at first somewhat prejudiced against it, [the claim,] at the last interview I had with him, expressed himself satisfied that a great outrage had been committed upon our citizens by the President of the Republic of Paraguay, and that he should make a demand upon his government for indemnity."

The records of the department show that this assurance was complied with. On the 18th of July, 1856, Mr. Marcy writes to Mr. Peden, American Minister at Buenos Ayres, as follows:

"A company of American citizens, called the 'United States and Paraguay Navigation Company,' was established in the manufacturing business within the territory of Paraguay, with the full consent of the government of that country. A misunderstanding unfortunately arose between that government and the United States consul, Mr. Hopkins, who was the agent of the company. The authorities of Paraguay not only broke up the company, but seized its property. The conduct of Paraguay appears to have been not only unjust and oppressive, but to have produced the loss of a large amount of property. Mr. Fitzpatrick will be instructed to present to the Paraguayan government a claim for the damages sustained by its unjustifiable proceedings towards the company. Should there be, as there probably will, a difference of opinion as to the character and amount of indemnity to which the company is entitled, [not as to the *liability*, be it observed, but as to the *indemnity*,] Mr. Fitzpatrick will be instructed to investigate the transaction, and report thereon to the government."

Accordingly, on the 5th of August, 1856, Mr. Marcy writes to Mr. Fitzpatrick as follows :

"No doubt is entertained that injustice was done to the company, and that under the condition of things in Paraguay, the government of that country is accountable therefor. You will accordingly, at a proper time, and in a proper manner, make known the views of this government on the subject. Before advertng to it, however, it is deemed advisable that you should propose an exchange of the ratifications of the treaty with Paraguay, which was concluded on the 4th of March, 1858."

Whatever prejudices Governor Marcy may have had in the beginning, against Mr. Hopkins, or the claim of the company, he had reached the conclusion, it will be seen, at this time, that, beyond any doubt, "injustice was done to the company, and that, under the condition of things in Paraguay, the government of that country is accountable therefor." This was the deliberate judgment of Governor Marcy, and was made the basis of his official action.

It was a judgment found, moreover, not upon *ex parte* statements of the company, but in full view of the statements, also, of Paraguay, and with the correspondence of Mr. Falcon, on the files of the department.

The mission of Mr. Fitzpatrick was a complete failure. He was so rudely treated on the subject of the treaty, and his request was so summarily refused, that he seems to have thought it useless to attempt any other business. The claim of the company was not mentioned, and when he was satisfied that President Lopez would not consent to exchange the ratifications of the treaty, he at once withdrew.

It now became necessary for the Government of the United States to resort to more decisive measures in respect to Paraguay. Without any good reason on earth, the business of the company had been broken up, its property seized, and its servants insulted ; a peaceful surveying vessel had been fired upon, and an American citizen had been killed ; a treaty solemnly made had been refused to be exchanged upon the most frivolous pretext, and our agents, who were sent out in a spirit of moderation to adjust the existing difficulties, had been received with rudeness, and refused any satisfaction whatever. It was quite time that President Lopez should be made to feel his true position.

Accordingly, after a careful examination of the subject, the President brought it to the attention of Congress. In his message of December 8th, 1857, after referring to the treaty and to the Water Witch, he adds :

"Citizens of the United States, also, who were established in business in Paraguay, have had their property seized and taken from them, and have otherwise been treated by the authorities in an insulting and arbitrary manner, which requires redress."

This was the judgment of the President of the United States, as deliberately published to the world in his annual message. And so important did he deem the subject that he made the following recommendation :

"A demand for these purposes will be made in a firm but conciliatory spirit. This will the more probably be granted, if the Executive shall have authority to use other means in the event of a refusal. This is accordingly recommended."

The recommendation of the President was responded to by the Committees on Foreign Affairs, both in the Senate and House. The reports of both committees are before the commissioners, and set forth, in the most clear and emphatic manner, the wrong done by Paraguay to the company, and the justice of their claim to redress.

On the 2d of June, 1858, Congress adopted a resolution authorizing the President to adopt such measures and use such force to secure justice from Paraguay as he might think necessary.

A large expedition was at once formed by the Secretary of the Navy, and placed under the command of Commodore Shubrick. Willing, however, to avoid, if possible, the use of force, a commissioner was appointed, (Mr. Bowlin,) who accompanied the expedition, bearing definite proposals of adjustment to be laid before Paraguay. These proposals of course, were the terms dictated by this government, upon which alone hostilities could be avoided. They are contained in the instructions of General Cass to Mr. Bowlin, and speak for themselves. In reference to the claim of the company, they relate wholly to the question of amount. As to any question of wrong or injury, Mr. Bowlin was entrusted with no discretion whatever. That question was regarded as fore-

closed. Concerning this part of the subject, his instructions left him no possible room for doubt. The injuries done to the company were detailed to him at length, and he was distinctly told that the loss of the company "was occasioned by the wanton violence of the Paraguayan Government," and that there was "no doubt that the Paraguayan Government ought be held to make it good to the injured party." "If, therefore, (it was added,) the Government of Paraguay should consent to the payment of the sum of \$500,000, in full discharge of the entire claim of the company, you will not refuse to make the adjustment for that amount."

This was the first discretion entrusted to Mr. Bowlin in reference to the claim of the company. He might adjust it for \$500,000. This failing, he had one alternative. Such was the confidence of the company in their case, that they preferred to present it to a joint commission rather than adjust it for a less sum than \$500,000, which they regarded as a liberal compromise of their just claims.

"If you find it impossible," adds, therefore, General Cass, "to reach an agreement with the Paraguayan Government as to the amount of indemnity to be made to the company, (not as to the wrong and injury done—that was concluded,) you may propose to leave this to be determined by an impartial commission." "An indispensable preliminary, however," he was carefully admonished, "to this adjustment, will, of course, be an acknowledgment on the part of the Paraguayan Government, of its liability to the company."

This was his second mode of adjustment. If Paraguay would pay \$500,000, he might adjust the claim for that sum. If not, he might refer the question of amount to be settled by commissioners under specified treaty provisions, provided, however, that the Paraguayan Government must first acknowledge its liability to the company. Unless this was acknowledged, he had no authority to make the treaty, but must refer the subject to the commander of the American squadron, who could then have employed force.

It will not answer to say that the naval expedition had special reference to the *Water Witch* and the treaty, for this idea is directly contradicted by the instructions. "You will state," writes General Cass, "that the President desires friendship with Paraguay, and trusts that this desire may be reciprocated. In the cases of the *Water Witch* and Paraguay Navigation Company, however, he can accept no other proof of such a desire on the part of that Government than the ac-

ceptance by it of the basis of settlement of these cases which has been indicated."

Thus, in order to avoid the use of force against her, Paraguay was either to pay \$500,000 to the company, or else to acknowledge its liability, and consent to refer the question of amount to a joint commission. This was the whole of Mr. Bowlin's discretion in reference to the company.

To say that he made the treaty without this acknowledgment of liability, would be to charge him with a direct violation of his instructions, of which I am quite sure he could never be guilty.

To say also that the President of the United States thus limited Mr. Bowlin's discretion, in a case involving peace or war, without having fully satisfied himself that the wrong had been done and the liability incurred, would be to charge that distinguished functionary with a dereliction of duty which no man living is less likely to commit.

But, in point of fact, Mr. Bowlin is not chargeable with any such violation of his instructions. In his despatch accompanying the treaty, he declares that he has literally obeyed them, except in reference to a suggestion which was made to him as to the place where the award should be paid. This he deemed unessential. His obedience is shown, moreover, by the treaty itself. We come, now, to the treaty.

The preamble recites "a pending question" to be settled. The only pending question was the question of amount. The liability had been conceded, but there was a failure to agree upon the amount. President Lopez was willing to pay \$250,000, but Mr. Bowlin was not authorized to receive less than twice that sum. There was "a pending question," therefore, of amount, and this was to be determined by commissioners.

The first article binds Paraguay, in substance, to pay the award of the commissioners.

The second article is specific as to the whole object of the convention. "The two high contracting parties" [it says] "appreciating the difficulty of agreeing upon the amount of the reclamations," &c. The difficulty is not as to agreeing upon the question of wrong, or injury, or liability, but only upon the amount; and "to determine the amount of reclamations, [not the wrong,] it is therefore agreed," continues the article, "to constitute such a commission." By the terms of the same article the two commissioners are to meet in Washington to "investigate, adjust, and determine the amount of

the claims," &c., and in the fifth article the mode of payment of such "amount" is specifically indicated.

The letter of the treaty, therefore, is in strict conformity with the purpose of it, in strict conformity with the instructions under which it was made, in strict conformity with the views of Congress who authorized the expedition, in strict conformity with the views of the President, and in strict conformity with the whole history and justice of the case. Nothing was intended to be embraced in the treaty but the question of amount; and human testimony, it is respectfully submitted, cannot possibly make anything more clear than that no other question *was* embraced in the treaty.

Nor was there anything novel, under the practice of our government, in thus requiring an admission of liability as an indispensable condition of delay. Such cases have been of frequent occurrence. In the recent instance of the "Aves claim," where Venezuela was charged with having evicted a party of American citizens from a guano island, our Minister at Caraccas was finally instructed to demand his passports, unless Venezuela would admit its wrong and acknowledge its liability. In that event he was authorized to remain, and leave the computation of damages for subsequent arrangement. To avoid the acknowledgment, Venezuela sent a special minister to this country, with an earnest request that the negotiation should be transferred to Washington, where the damages, it was alleged, might be more equitably assessed, for several reasons, which were given, than could possibly be done in Caraccas. But our government would only consent to the transfer upon the condition of an admission of liability, and the special minister returned home. The government of Venezuela, having then exhausted all its efforts to avoid doing so, at last made the required admission, and our Minister remained at his post. Some time afterwards the claim was adjusted to the satisfaction of the parties. This is only a recent case to illustrate a common practice. And the reason for the practice is quite obvious. Whenever a wrong has been done to a citizen, there is an injury done also to the national honor. The question of damages may require time, and can wait; but when the facts are once known, a nation jealous of its honor will demand the most prompt atonement. The acknowledgment of wrong and the promise of indemnity are, in the beginning, of course, a sufficient satisfaction. It will only remain then to compute the loss and see that the promise is complied with. In the

present case, the commissioners are to ascertain the loss, and Paraguay has agreed to make it good.

But even if this were all otherwise, and the whole question of wrong still remained to be determined, there is abundant evidence in the case to satisfy the most reluctant mind. The same facts which convinced Governor Marcy, which convinced General Cass, which convinced President Buchanan, which convinced both branches of Congress, and which led to the extreme measure of an armed expedition, it may fairly be taken for granted, would convince also this honorable commission. It is difficult, indeed, to find, in all the crowded catalogue of our Spanish-American claims, a single instance where, considering the magnitude of the enterprise, the assurances under which it started, the favor which met it in the beginning, the great success it had begun to realize, and the means by which it was finally destroyed, there has been a greater outrage inflicted upon the rights and interests of American citizens, than was inflicted by the government of Paraguay upon the rights and interests of this company. The conduct by which President Lopez advanced to his purpose, after he had once resolved upon it, we hesitate, before this honorable commission, to characterize as it deserves. We content ourselves with remarking that the injury committed was none the less certain and disastrous because it was not accomplished by one bold act of violence, but was gradually reached by a series of contrived and cunning measures which led inevitably to the same result. It was a system which, beginning with popular insults and annoyances, for which there was no redress, and proceeding through arbitrary decrees, which, though general in their language, were yet specific in their application, culminated at last in the use of military force, and the threat of personal imprisonment.

In order to understand clearly the character and effect of these measures, it is essential to keep in view the peculiar relation which President Lopez bears to the Paraguayan people. He is not only the chief magistrate of the country, but he is practically, also, its unquestioned dictator. "The judiciary, elections, and Congresses," says Lieutenant Page, "are alike controlled by the President, who governs with an authority as unquestioned as if he were supreme dictator." Nor is his authority confined to the leading departments of the government or to the principal transactions of the State. It penetrates everywhere, and is exercised on all

classes and every subject. The people were educated to the most timid obedience under Dr. Francia, and this obedience continues to its full extent under his successor. An unquestioning and timorous submission to his decrees, a reverential awe and demeanor in his presence, are observed by all," Lieutenant Page continues, "however high their official or social position." "It would seem, indeed," says Sir William Parrish, "that the Paraguayans have been so habituated to a despotism, that they have no ideas or wishes beyond it." (Buenos Ayres, from the Conquest, p. 287.) The natural associate of a despotic system, in Paraguay as well as elsewhere, is a complete system of "*espionage*;" and while nothing is done in that country against the will of the dictator, such is the vigilance of his agents that nothing is done without his knowledge. The extent to which he interferes, even in the social and personal affairs of his people, is almost beyond belief; and the idea that any series of public insults or annoyances could be practiced against foreigners in Paraguay without his knowledge and consent, is wholly inadmissible.

Added to this, General Lopez (or the government, which is the same thing) is understood to be the chief merchant and banker of the country. The commercial, as well as the political, the judicial, and the social affairs of Paraguay are all controlled in a great degree by him. Through monopolies and agents and family connections, he wields a large part of the whole property of Paraguay. A doubt was entertained on this subject in the proceedings before the commission, but the statement, we think, cannot be successfully controverted. It is confirmed by all the witnesses who have appeared in this case, and by every traveler, it is believed, who has written concerning Paraguay.

With this overshadowing and all-pervading authority of President Lopez, it is not strange that, when he received favorably the employés of the company, on their first arrival in Asuncion, they were also received favorably by his people. The general agent of the company (Mr. Edward A. Hopkins) had done business in Paraguay for some eight years previous to this arrival, and his relations with President Lopez had always been of the most friendly character. It was through his influence, in some measure, that the expedition had been formed; and besides the assurances contained in the public decree of 1845, he felt that he had a right to rely, in behalf of the company, upon the friendly feelings of

the Paraguayan government. In this he does not, at first, seem to have been in error. Both he and his associates were received with cordiality; courtesies were freely exchanged with President Lopez; a carriage was presented to him, and suitably acknowledged to the "general agent" of the company; lands were purchased without difficulty, and with his concurrence; the use of the old barracks was granted to the company for two years; the requisite *peones* were supplied upon easy terms; the natives were courteous and respectful, and the company proceeded to establish itself under the most favorable auspices. In a brief period it had its cigar factory at work in Asuncion, and its saw-mill in operation at San Antonio. It had obtained a desirable site on the river, and was proceeding to employ its other machinery. Its anticipations had been more than realized, and with the arrival of the second expedition, which was soon expected, a new development of its enterprise and further profits were confidently looked for.

President Lopez seems to have been somewhat startled by these results. He saw a new era opening on his country. He was willing to introduce improvements, but he desired to have their control and benefits for himself. He was willing that some of his subjects should be taught a useful trade; but what if they should acquire at the same time some American notions of liberty and right? Where was this thing to stop? Here was a great company, with large means and intelligent managers, planted in the midst of a rich country of undeveloped resources, gradually expanding itself to meet the wants of its position, and destined, if it continued to flourish, to exert a powerful influence in the affairs of all that region. The introduction of a few useful machines or a few individual traders was all very well; but at the possible future of a great commercial company he evidently took alarm. Besides, the improvements being introduced, and some of his people instructed, he saw no reason why he should not employ the improvements and derive the profits himself. These are the motives under which, according to the general opinion on the La Plata, as stated and concurred in by Lieut. Page, and according, also, to all the probabilities of the case, President Lopez and the French minister changed his policy towards the company. In point of fact, according to the testimony of Lieut. Page and others, "on the breaking up of the American company, one of President Lopez's sons immediately went into the cigar

business with these same operatives." Mr. Morales testifies, moreover, that on a previous occasion he had been offered inducements to leave the company and work for President Lopez.

The company was now to be broken up, and the change in President Lopez towards the Americans was at once manifested by the change in the conduct of his people. Their previous civility was now exchanged for rudeness; and where they were before respectful, they were now insolent. All the witnesses testify to the nature of these annoyances. Mr. Hines, however, sufficiently describes them.

"Gradually," he says, "their kind treatment was changed, first from neglect to annoyance, and from annoyance to insults, till it became almost impossible to live in Paraguay at all. Spies were about us to catch every word we might utter, and to watch us about our daily avocations, to repeat to their superiors every word, every act, no matter how trivial. Insults of various kinds were offered the American residents. My wife, a native of the United States, was some months resident with me in Paraguay. Her health was very delicate, and the annoyances and insults she was obliged to suffer had a serious effect upon her health. People have tried to pull her from her horse by catching at her habit when riding rapidly. Our house was beset by a crowd of native rabble, who would throw into our windows sand, stones, bones, oranges, or anything that was within their reach. Upon trying to find the offenders, all would profess innocence."

The same annoyances, according to the testimony, were practiced towards all the Americans, even including the officers of the *Water Witch*, and the counting-room of the company was a special object of attack. The assault by a soldier upon Mr. Clement Hopkins, when he was riding with Madame Guillement, is a part of the same history, and shows the general *animus* which at that period existed in the country towards all Americans. That this *animus* and those annoyances were really the work of the government, there can hardly be a reasonable doubt. No native of Paraguay would have dared thus to act against its will; and it is equally certain that no native of Paraguay could thus have acted without the knowledge of President Lopez. It is true that on one occasion a guard of soldiers was placed at the house of Mr. Hines, but the annoyances were more frequent while the guard was on duty; and this fact, of itself, indicates the complicity of the government.

The first step, then, which was taken by President Lopez, in order to drive out the Americans, was to excite his people against them, and thus expose them to insult and annoyance. The force of this step can easily be estimated by any one who has resided for any length of time in a distant and half-civilized country. It is no pleasant thing when a man is thousands of miles from own his government, and with the authorities of his residence indisposed to protection, to find himself living in the midst of a hostile population. This step was well calculated to have effect.

But resort was now had to more decisive measures. The first of these sought to deprive the company of a large part of its estate in San Antonio. This had been bought of Mrs. Bedoya, a widow, some five months before, with the full concurrence of President Lopez and the guardian of minors, and had since been improved for the purposes of the company. A copy of the deed of this land will be found among the papers in the case. It was purchased when the company was in favor with President Lopez, and every facility was rendered in the completion of the sale. Among other things the company was relieved by the government from any formal mensuration of the land. There were old barracks, also, on the premises, and President Lopez gave the free use of these to the company for two years. But now his whole policy was changed. Mr. Hopkins had lost his favor, and the company was to be driven out.

By decree of August 16, the title to the land was declared void. Mr. Hopkins was charged with fraud in obtaining, and Mrs. Bedoya was ordered to refund the purchase money. The pretext for all this was that the guardian of minors had not consented to the sale, and that the land had not been measured. The deed itself, however, shows that the guardian *had* consented, and the evidence is conclusive that the mensuration had been waived by President Lopez himself. Such a decree, under such circumstances, in reference to land bought originally under the auspices and with the approval of the government, occupied for five months without a word of objection, and improved by the company at great cost, scarcely requires a word of comment. It is another step of the Paraguayan Government towards the destruction of the company. Of course, Mr. Hopkins refused to receive back the purchase money, to which there was no provision in the decree for adding any compensation for improvements, and insisted, as he had a right to do, upon the perfect honesty

and legality of his title. The next demonstration was on the barracks. The use of these had been granted to the company by President Lopez himself, for two years from November, 1853. Mr. Hopkins was now notified by a colonel of infantry, that he had orders from the President to take possession of them; and against all protest, this possession, it will be seen from the testimony, was speedily accomplished.

On the 23d of August, President Lopez issued another decree, which was doubtless intended, and was certainly well calculated, to effect without any delay or uncertainty, his whole purpose of destroying the company. The decree, in its terms, applies generally to all industrial establishments; but as the company was the only establishment of the kind in Paraguay, its reference to the company was, of course, just as specific and direct as if it had been mentioned by name. The whole decree is directed against the Americans. Some of them, from the injuries they had received, had felt it necessary to arm themselves. This is positively prohibited, under forfeiture of the arms and punishment of the offender. All meetings of foreigners, except for courtesy and diversion, are also forbidden either by day or night. Of course there could be no meeting for purposes of business. The sale of land to foreigners is forbidden, and whenever land is to be sold, the State has the just right to purchase. Sales of land already made without attention to rights are declared void and of no effect; and a special requisition is made upon previous purchasers of land, who have not had a judicial survey, to apply to the government for this purpose, and within six days to file their deeds. Every unlicensed factory is to be shut up within three days, unless within that time the license is applied for. The use of any foreign commercial title is prohibited without the formal knowledge of the government. It is unnecessary to cite the whole of these provisions, for the decree itself is before the commissioners. Its object is as unmistakable as its effect.

An establishment that had been going on for months under the very eye of the government, not only without objection, but with its manifest approval, is now weighed down with conditions which are manifestly inconsistent with its existence. No land, no factory, no title, no general agent, no business meetings—what could be done with the establishment of the company after these prohibitions? Mr. Hopkins tried to avoid the blow; but when he applied for the license, his application was returned because he had signed

it as 'General Agent.' Yet, in his earlier intercourse with President Lopez this title had been constantly used on both sides without objection. The President used it in his letter acknowledging the present of a carriage, and in all the deeds produced here, it will be seen, the same designation was employed. Yet, after the lapse of many months, a solemn decree demanded its formal communication. Mr. Hopkins complied with the decree, but its formal notice was repelled as an intended insult. Meanwhile, a new decree of the 29th of August practically deprived the Americans of all their servants, and, as several of the witnesses testified, they hardly knew how they were to live. It was dangerous for the natives to be on good terms with them. They were unwilling to rent them their dwellings, or furnish them with supplies. They were annoyed in their houses and stoned in the streets. Mr. Hopkins could only protest with earnestness, and refer the case to his own government. For doing this his *exequatur* was withdrawn. It is due to him to say that in the official paper announcing this withdrawal, no good reason is given for it on the face of the earth. We are not called upon to justify all the consular acts of this officer. It is possible that he had an exaggerated idea of his consular position, and of his official duty to protect the rights and interests of his countrymen. But we have looked in vain through the correspondence in this case for any evidence against him of a serious indiscretion. He is evidently a man of ardent temperament, and from some of his despatches he appears to have been impatient, at what he regarded as a want of sympathy on the part of Captain Page. It is only just to remember, however, that if their judgments differed in the beginning concerning President Lopez and his treatment of this company, they were quite harmonious in the end, and Captain Page has placed on record, his opinion upon these subjects, in language quite as strong as any which has ever been used by Mr. Hopkins. The course of this government (he writes officially to the Secretary of the Navy, under date of September 26th, 1854) "towards this company, in my humble opinion, requires some action on the part of our government, not only in the way of reclamation, but, should there come to reside in this country American citizens, their protection from oppression and maltreatment would not be secured to them unless by the presence of a man-of-war." * * * "How long the good relations between this government and myself may continue, it is impossible to say, and will depend upon

its own course. There is a want of dignity and integrity, which will suspend friendly relations by a precarious tenure."

Captain Page, therefore, concurred at last with Mr. Hopkins, both in respect to the government of Paraguay, and in respect to its treatment of the company. Nothing, however, could avert the threatened destruction. The work was finally accomplished by the use of military force. On the 28th of August, the cigar factory was closed, under from the government, and more than a hundred laborers expelled therefrom, to whom the company had paid some eight hundred dollars of advanced wages. This is the testimony of Morales, which is confirmed by other witnesses, and by the official papers of Paraguay itself. On the 5th of September, the saw-mill belonging to the company was also stopped, the peones were discharged, and all the property at San Antonio was seized by the government. The directions, for these purposes, were given to Mr. Vasquez, and his official report is among the papers in the case.

The work was now done. Neither factory, nor land, nor house, nor machinery, nor laborers, nor servants, nor associates, nor commercial character, nor official representation with an arbitrary government and a hostile population; no wonder that the Americans felt seriously anxious at their hazardous situation. Yet, strange as it appears, they seem to have found it difficult to get away. Under the rule of Dr. Francia, the system of detaining foreigners in Paraguay was practiced to a very liberal extent. Messrs. Rengger and Longchamp, two Swiss gentlemen, who afterwards published an account of their detention, were thus detained for several years, and Mr. Bonpland, the well-known companion of Baron Humboldt, was only set at liberty after he had been a prisoner for nine years. In the midst of the difficulties which surrounded them, and especially those of procuring a vessel and the necessary permits to embark their goods, the Americans recurred, perhaps, to these cases, and began to dread some serious restraint. They were relieved, however, from any such apprehensions as those, by the presence of Captain Page, in the United States steamer *Water Witch*, and on board that vessel they were at last safely embarked.

The narrative we have given is drawn wholly from the evidence. It contains nothing but what we believe to be true, and many details, similar to those mentioned, might safely be added to it. Of this character, for example, is the degradation imposed upon the witness Morales, who was

compelled, he says, at peril of his life, to carry the sign of the company from the cigar factory to the office of police, followed all the way by a Paraguayan soldier. We have stated enough, however, to show the aggravated wrong of which we complain, beyond, it appears to us, the shadow of a doubt. It is easy for Paraguay to blame Hopkins. It is easy for President Lopez to make denials. It may not be impossible, here and there, to find slight discrepancy of evidence, or a single inaccuracy of date, though we confess we do not know where they are. But the great facts, after all, remain, and no human ingenuity can possibly explain them away. No wonder that Captain Page, in view of them, urged upon his government the most strenuous measures. No wonder that Mr. Hopkins and his associates were indignant at their wrongs. No wonder that the company appealed promptly to the executive and Congress of their country. No wonder, either, that the appeal was answered, and the use of force authorized. There is enough in the plain history of the case to account for and justify all these appeals and all this earnest action. If ever a government committed an aggravated outrage upon American citizens, such an outrage was committed by the government of Paraguay upon this company.

By the series of events which we have narrated, the company had been broken up, and had been driven away. No one believes that it could have sought this fate. It had gone too far, and risked too much to retire voluntarily from a field which it had found more promising even than it first expected. It had yielded only to a hard necessity. A similar necessity broke up soon after the French colony in "the Chaco," which had come out and established itself under the guaranty of a solemn contract. "Such was the treatment of these foreigners by President Lopez, [writes Captain Page in his volume, page 284,] that before the expiration of one year they broke up, and many of them escaped, not by the river, for the vigilance of its chain of guardians is not easily eluded, but through the Chaco, preferring to run the gauntlet of Indians, jaguars, and starvation, to living under such oppression."

But it is enough for us to refer to the testimony in our own case. The difficulties which Paraguay has had with other powers, its alleged disregard of treaties and contracts in other cases, and the manner in which it attempted to justify its attack upon the Water Witch, by a fabricated map of the river, we do not care to dwell upon. We only press

upon those honorable commissioners the aggravated character of the wrongs done to this company; and, in consideration of these wrongs, we appeal to them for redress.

We come now to the real question in the case. We come to the question of damages. The aggravated wrong being established, the wrongdoer is, of course, bound to make indemnity, and this honorable commission is to determine the amount. Upon what principles shall this determination be made?

In the first place, it can hardly be denied that the company is entitled to compensation for the actual and *bona fide* expenditures, which have been made fruitless from the wrongful acts of Paraguay. On this point, we are justified in remarking that the exhibits of the company have been singularly full, and frank, and explicit. Its books, and its vouchers, and its cashiers, and its agents, have all been produced before the commissioners, and submitted to the most careful examination. Whatever else may be determined, there can be no doubt at all as to the amount and objects of the company's expenditure. Nothing has been kept back, and nothing has been exaggerated or distorted. This amount, it belongs to the government of Paraguay to make good. It is the actual cost of establishing ourselves in that country. What the property left there may have been worth, or what the property we purchased there was worth in other hands, furnishes no safe criterion whatever for the estimate of damages. Every necessary step which we took to carry the expedition into effect is just as much a part of its cost as the purchase money we paid for land in San Antonio, or for the cigar factory in Asuncion. It was impossible to go without vessels; it was impossible to go without agents; it was impossible to go without machinery. The vessels were purchased and repaired, the laborers were hired, and the machinery was sent out. The necessary expenses incurred for these purposes go directly to swell the cost of the expedition, and when President Lopez broke up the company and compelled it to retire, in respect to cost, he must be held as having taken its place. Having seized the position, he must pay what the position cost. Having taken our property and broken up our business, he has no right now to plead in extenuation the cheap land or the cheap buildings in a country under his own control. The books, and papers, and witnesses, show that what we paid for our purchases in Paraguay was a very inconsiderable part of our aggregate expenditure. We were not na-

tives of Paraguay, but had to go there, and had to take there all the materials necessary to the development of our plans.

The expenses, in going and returning on an errand unjustifiably made fruitless by another, even in the absence of any actual wrong, have frequently been held allowable by the courts. Thus, where an agreement had been made to let certain premises as a tavern stand, and the plaintiff had removed his family to take possession, which was refused, it was held that the plaintiff was entitled to recover, not only the value of his lease, but also his expenses in removing his family and furniture. (Sedgwick on the Measure of Damages, page 86; *Dreggs vs. Dwight*, 17 Wend., 71.) So, where there was a breach of an agreement to let the plaintiff have the use of certain mills for six months, for ten pounds, it appeared that the mills were worth only twenty pounds per annum, and yet damages were given to £500, by reason of the stock laid in by the plaintiff; and, "*per curiam*, the jury may well find such damages, for they are not only bound to give the ten pounds, but also all the special damages."

Even in cases of breach of contract, there is a manifest tendency towards a greater liberality of compensation. Whenever there are reliable *data*, the courts seem willing now to make the party injured entirely whole, even to the extent of damages somewhat remote.

Where the case, however, is a case of *tort*, and the wrongdoer is the defendant, the rule has been held to extend even to consequential damages. "He who has caused a damage maliciously and purposely," says Puffendorf, "is answerable for all events, however unforeseen or extraordinary they may be. He has himself, in a voluntary manner, become liable to all the consequences of his own wicked act and intention, and therefore merits no indulgence." (Law of Nations, book 3, chapter 1, page 213—note.) So, in 6th Bingham, 716, Tindal, C. J., says: "No wrongdoer can be allowed to apportion or qualify his own wrong; as a loss has actually happened while his wrongful act was in operation and force, and which is attributable to his wrongful act, he cannot set up as an answer to the action the bare possibility of a loss if his wrongful act had never been done." See also the "*Amiable Nancy*," 3 Wheaton, 546 and 558, where it was held that, "had the action been against the original wrongdoer, exemplary damages might have been allowed. The rule is, however, says Sedgwick, page 112, that even in cases where vindictive damages cannot be demanded, the law will go

further in quest of consequence, to punish a wrongdoer than to redress an act of pardonable negligence."

"I do not think," says an eminent English judge, in a recent case, "that the jury is bound to weigh in golden scales how much injury a party has sustained by a trespass."

But the actual and necessary expenditures of the company in the establishment of their business have nothing to do with consequential damages. They are in the nature of direct and certain damages. They are expenditures which have been made fruitless by the wrong of Paraguay. There is nothing conjectural about them. The data for their computation are clear and distinct, and the proof of their payment is beyond a doubt. The "United States and Paraguay Navigation Company" had actually paid out and expended in the prosecution of their enterprise, prior to its destruction by Paraguay, and have since expended, in legitimately winding up its business, and prosecuting its claim for indemnity, the sum of \$402,597.37. Embraced in this amount are its losses on two vessels, neither of which had reached its place of destination. One of them was condemned and sold at Maranhão, and the other, only reaching Buenos Ayres after the company was broken up, was driven to a deviation from her voyage, and was wrecked in Tigre river. There is no question, however, that both the ships were selected with care and judgment, and that the disasters which befel them are beyond the reach of ordinary prudence on the part of the company to avoid.

The history of the "El Paraguay" is stated in detail, and with great frankness, by Captain Potter. She was a staunch, strong vessel, thoroughly repaired, and fitted out at great expense, and was only rendered unseaworthy by a succession of storms which it seldom falls to the lot of any vessel to encounter during one voyage. She forms a just part, then, of the expenses of the expedition. Her loss was one of the incidents of the business; and every enterprise must encounter risks and suffer losses as well as make profits, and the profits are relied upon to make compensation for the losses. The company understood all this perfectly, and it only took the hazard from its confidence in the final results of its enterprise, and its expectation of deriving from it, at last, the most satisfactory returns. This expectation bid fair to be fully realized, when President Lopez, by driving out the company, made Paraguay liable for all the legitimate losses of the company. Had the company been left to itself, the

losses would have speedily been swallowed up in the gains.

The same may be said of the selection and outfit of the "Blodgett," that has been said of the selection and outfit of the "El Paraguay." But the Blodgett arrived safely at Buenos Ayres, and but for the deviation from her voyage, which the acts of Paraguay occasioned, she would doubtless have arrived safely at Asuncion. Her loss was occasioned by this deviation, and the law is well settled that, in such a case, the loss must fall upon the party by whom the deviation is rendered necessary.

To where the defendant undertook to carry a quantity of lime in his barge, from Medway to London, and in going to London deviated from the usual course, and during the deviation a tempest wet the lime, whereby it set fire to the barge, and the whole was destroyed, it was held that the cause of the plaintiff's loss, viz: the deviation, was sufficiently proximate to entitle the plaintiff to recover. (*Davis vs. Garrett*, 7 Bingham Rep. 716.) See also, 22 Penn. 54, *Pittsburgh vs. Grier*. Opinion of Black, C. J.

But the loss in both these instances, the Paraguay and the Blodgett, having occurred through no negligence of the company, may well be charged, independent even of the rule of loss, as a part of the general cost of the company's position in Paraguay.

As other *items*, also, in this same account of expenditures, are embraced charges for counsel fees and expenses of prosecution. Under the civil law these were always allowed; and Story J., in *Pierson vs. Eagle Screw Company*, 6 Story, 402, seems to have settled the principle in common law. "If the plaintiff," he says, "has established the validity of his patent, and that the defendants have violated it, he is entitled to such reasonable damages as shall vindicate his right, and reimburse him for all such necessary expenditures as have been necessarily incurred by him, beyond what the taxable costs will repay, in order to re-establish that right."

Judge Woodbury afterward concurred in this opinion. (*Allen vs. Blunt*, 2 Woodbury and M. 121.)

The same rule was adopted by the American commissioners in Leggett's case, and was sustained by Baron Roenne, the arbitrator. The inquest allowed in that case for time and expenses in prosecuting the claim.

In Leggett's case, also, interest was allowed at the legal rate in Mexico. We have charged interest in our exhibit

according to the rates and practice in Rhode Island, and only what would make us whole, if it should be allowed.

But the position in Paraguay, which had been achieved after great expenditure and so many disasters, was worth far more to the company than it cost. Without claiming consequential damages in any form whatever, we respectfully maintain that, in estimating the value of the company's position in Paraguay, and the indemnity, consequently, which President Lopez should pay them for having taken it away from them, reasonable reference must be had to the profits which were likely to be derived from it. In many cases this ability to make money—or, in other words, expected profits—constitutes the whole value of a property. Take a newspaper, for example, where everything is dependent upon the "good will." We have known \$30,000 to be given for a newspaper establishment, which did not even own the press and type upon which it was printed; yet the establishment was worth the price paid for it, because it yielded a large interest on that sum.

The rule of considering profits as an element of value is sustained by the most respectable authorities. In *Ingram vs. Lawson*, 6 Bingham, N. C., 212, the plaintiff was allowed to prove the average profits to the captain on an East India voyage, and the jury were instructed that, with a view to estimate the damage, they might look to the nature of his business and his general rate of profit; and, on a motion for a new trial, this was held right. "With respect to the damages," Coltman, J., said, "the jury must have some mode of estimating them, and they would not be in a condition to do so unless they knew something of the plaintiff's business and the general return from his voyages."

So, in Alabama, (*Donnell vs. Jones*, 17 Ala., 689,) the court say: "We would by no means say that the jury should make the supposed profits which the plaintiff had lost the *measure of damages*. All we design to affirm is, that proof tending to establish such loss, as a consequence of the suit, (malicious prosecution,) may properly go before the jury, to serve as some guide for them in the exercise of their discretion in estimating the loss."

And Mr. Sedgwick says (page 93) that in cases of tort, this evidence appears to be often necessary. In *McNiel vs. Reed*, also, (9 Bingham, 68,) which was an action for breach of an agreement to go into partnership, the plaintiff was allowed to show the value of an East India voyage which he had

given up, "not as special damage, but as an ingredient for estimating the value which each of the parties set on the contract in dispute."

In a commission of this kind, under a treaty which requires only impartiality and justice at the hands of the commissioners, no reasonable ingredient of damage will be refused consideration. Mere technicalities will be always sacrificed to substantial justice; and where the courts admit the estimate of profits at common law, to assist the judgment of a jury, a liberal application of the same rule will doubtless be made by an international commission, which has a large discretion and sits to do equity.

In Leggett's case, the American commissioners, watchful of the most extreme rights of their own citizens, decreed the allowance to the claimant of "expected profits" as direct damages, and the argument of Governor Marcy in justification of this rule, *as against a wrongdoer*, is extremely able, and supported by the most respectable authorities. But the consideration of probable profits as an element of present value, is allowed in cases of tort by the best of the modern decisions, and by the leading text-book also, (Mr. Sedgwick's,) on the subject of damages. It is a legitimate element, therefore, in cases of this description, and is peculiarly appropriate in this case.

When the company embarked in their enterprise, it was of course with a view to expected profits that they did so, and it was with a view also to extraordinary profits. They understood very well the risks they encountered. They knew how much capital they would have to invest. They knew that some of their ships might be disabled, and some of their agents might fall victims to the climate. They knew that the contemplated seat of their operations was far off, and in a region where governments were not always stable, and revolutions not impossible. They understood all these *risks*, and they took them in consideration of what they believed they would ultimately accomplish. They were intelligent men. They had made themselves acquainted with the productions and resources of the valley of the La Plata, and with the position, in reference to them, of Paraguay. The government of Paraguay had held out inducements to them to go there, and they relied upon those inducements. They relied also upon having "fair play" there, and that legitimate protection which a law-abiding resident has everywhere a right to expect. They relied, more-

over, and more than all, upon the name and character of American citizens, and upon the disposition and ability of the government to protect its people, wherever they are, in the exercise and maintenance of their just rights. Under what circumstances this protection might become necessary, it was impossible to foresee. They had reason to anticipate the good will of President Lopez; but if he should become hostile and aggressive, they believed that he could not be allowed to justify his aggressions by alleging the arbitrary character of his government, and his consequent right to do as he pleased with foreigners, as well as with subjects. If he invited property there, he could not confiscate property. If he admitted citizens from abroad to trade there, under assurances of safety, he could not, by *ex post facto* decrees, break down their trade, and then drive them from the country. What might be the rule, under governments of fixed law, is not always the rule under governments of force.

"The United States believe it to be their duty," says Gen. Cass to the American minister in Nicaragua, under date of July 25, 1858, "and they mean to execute it, to watch over the persons and property of their citizens visiting foreign countries, and to intervene for their protection when such action is justified by existing circumstances, as well as by the law of nations. Wherever their citizens may go through the habitable globe, when they encounter injustice they may appeal to the government of their country, and the appeal will be examined into with a view to such action in their behalf as it may be proper to take. It is impossible to define in advance and with precision these cases in which the national power may be exerted for their relief, or to what extent relief shall be afforded. Circumstances as they arise must prescribe the rule of action. In countries where well defined and established laws are in operation, and where the operation is committed to able and independent judges, cases will rarely occur where much intervention will be necessary. But these elements of confidence and security are not everywhere found; and where that is unfortunately the case, the United States are called upon to be more vigilant in watching over their citizens, and to interfere efficiently for their protection, when they are subjected to tortuous proceedings by the direct action of the government, or by the indisposition or inability to discharge its duties." Relying, we say, upon this ultimate protection in case of necessity, but having good reason to believe that the necessity could not arise,

the company embarked in its really great and important enterprise.

Its success in Paraguay was beyond its expectation. Its only thought was, then, to enlarge its business, and send out new materials and additional men. Its profits, on the works it had had time to put in operation, were really enormous. Fortunately, the *data* and proof on this subject are quite sufficient, and beyond successful contradiction. These furnish the best possible basis for estimating the probable profits of the company.

Before considering these in detail, however, we desire to call the attention of the commissioners to the peculiar position of Paraguay in that region of country. Bordering upon Brazil, Bolivia, and the Argentine Republic, situated upon a navigable river, whose branches, in different directions, extend thousands of miles into the interior, and whose waters flow with increasing volume to the ocean, no better position could be selected for a company like that which is the claimant in this case. "The country of Paraguay," reports Captain Page, "presents a field for enterprise of which other portions of the world are profoundly ignorant." But if the view is extended so as to embrace the whole valley of the La Plata, with its numerous rivers, its wealth of fertile land, its herds of cattle, its woods and gums, and all the other products which go to give life to commerce; and, when it is considered what would be the effect upon this vast region of steam navigation, and the application of modern machinery and improvements, it is difficult to avoid the conclusion, that this company were not mistaken as to the grandeur of the undertaking upon which they entered. We do not dwell at length upon this consideration, because it is fully represented in the papers already before the commission, and particularly in the report to the Navy Department of Captain Page, where many interesting details are given of the products, as well as of the exports and imports of that country. In consideration of these facts and statements, the commissioners, we think, can hardly avoid the conclusion, that the company chose its place of operations with great judgment and sagacity. Had it been enabled to go on in its pursuits with the favor, instead of the hostility, of President Lopez, we confidently believe that it would have secured not only great wealth for itself, but great benefits, also, to American commerce.

If it were possible to entertain a doubt on this point, there

can be no doubt, surely, as to what was actually accomplished. The cigar factory and the saw-mill of the company had commenced their work. We have distinct and reliable testimony in respect to their profits, the details of which appear in the evidence. We were also entitled, by the organic law of the country, to patents upon a great variety of exceedingly valuable machinery.

If these patents were not perfected, the reason is quite obvious. There was no doubt of the priority of introduction of the machinery entitled to protection, and the law made no limit of time in respect to the application.

While on good terms with Lopez, moreover, the company's agent, constantly occupied in business, thought it unnecessary to press those parts of it which would not suffer by delay. Had the company voluntarily retired, it would have been sure to secure the patents; but to have applied for them after President Lopez became hostile, we need not say would have been wholly fruitless. We have still a right, however, to apply for them, and abundant proof with which to support the application. We were really the first introducers of most important machinery, and opened the way to much successful commerce. Others may reap, and are reaping, where we have sown, but nothing can take from us the credit of having been the pioneers of that commerce, and nothing surely *ought* to deprive us of a just indemnity for the destruction of our enterprise.

If, then, the commissioners, setting aside even everything conjectural and uncertain, will only consider what we have put in the case of actual results—of profits made and going on to be made by our cigar factory, and our saw-mill; of clear facts and figures beyond dispute—we think they can not fail to estimate the position of the company at Paraguay as one of great and growing value. And if to what is thus made certain shall be added what is probable, the estimate of the company will not be found extravagant.

We now leave the claim of the company to the judgment of the commissioners. It is no speculative claim; for we show the company's actual expenditures. It is made, too, we may be allowed to add, by no speculative parties. The men who were stockholders in the beginning are stockholders now. For intelligence and respectability they have no superiors anywhere. Just in proportion as they are disposed to repel an injury to themselves would they scorn to do wrong to others. They are not here to make a claim which

they do not believe to be just. They believe they have been wronged, and it is in consequence of this belief that they seek indemnity. Thus far they have the consolation of knowing that their case has been sustained wherever it has been examined. In this all departments of the government have concurred. In this all the officers of the *Water Witch* have concurred. There were no other Americans in Paraguay. We have given the best evidence of which the case is capable. As far as possible we have had our witnesses before the commission, and all our books and papers have been presented without reservation.

All this is not to be overcome by the denial of the wrongdoer himself, or by the affidavits of persons under his control. This denial was just as strong and pointed, and those affidavits were just as ready, before the armed expedition went out as they now are. The files of the *Seminario* show that during the whole discussion in Congress, and the whole progress of the expedition, everything was either denied or perverted which imputed wrong to Paraguay, in respect to either the treaty, the *Water Witch*, or the company. If the *Seminario* was right, the armed expedition was wrong. If President Lopez was guiltless of any outrage, it was monstrous to send against him a hostile fleet. If he was thus innocent, moreover, the cost, and labor, and risks, of that expedition were wholly needless. This government does not make war except after investigation, and in a clear case. Such a case it had, undoubtedly, against Paraguay. The judgment of the Executive on the subject was right, the judgment and action of Congress were right, and we do not doubt that the action of these commissioners will be right. One of them, from the necessity of the case, is the immediate representative of the government complained of. But, occupying here an impartial position, we none the less look to him for that justice which we feel we have a right to claim. The same impartial position belongs to the American commissioner, and we appeal to him also, and with entire confidence, to protect his countrymen in their rights. The enterprise of this company was precisely such an enterprise as the government of the United States has an interest in promoting. When men do business in the old channels, their risks are comparatively small, and it requires little comparative forecast and courage to embark their fortunes. But when a new way is to be opened, a new channel to be explored, and men are willing to send out their ventures to a distant field of

commerce, where they expect to develop new resources, and win both honor and wealth for themselves and their country, no government should be allowed to crush them by the strong hand of power. If this could be done with impunity, there would be an end to all distant and hazardous expeditions, except those undertaken by lawless men for lawless purposes. Happily, in this case the government of the United States has promptly interfered in behalf of its citizens. The armed expedition of Commodore Shubrick has exerted a powerful and wholesome influence, not only on the La Plata and the Parana, but in all South America. We have no doubt that this influence will be strengthened, rather than impaired, by the judgment of the commissioners in this case. To repress the practice of wrong, there is nothing more efficient than certain justice to the wrongdoer. And in this result all men have a common interest. As no man can know when he himself may be injured, so no man can safely tolerate the doing of an injury to others. When Solon was asked how there might be fewer injuries committed in the world, his reply was, "If they who are not injured would be as much concerned as they who are." In behalf, then, of the company which we represent, we ask that its claim to be indemnified for an admitted wrong, may have all that consideration and sympathy to which we believe it is fairly entitled.

SUMMARY OF THE FACTS AND EVIDENCE, AND REPLY TO SOME OBJECTIONS.

Inducements to the enterprise.

The undisputed facts are:

1st. That Paraguay invited expeditions like that of the company to that country.

The decree of the government of Paraguay, issued on May 20, 1845, invited foreigners to develop the resources of that country, and for that purpose proffered them the patent privileges (or compensation instead) for foreign discoveries introduced by them into Paraguay. Its terms, as furnished in an English translation by counsel for the government of Paraguay, are:

"The Supreme Government, wishing to develop and encourage the industry and improvement of the Republic, and considering that one of the modes best calculated for this object is to define, explain, and secure the conditions and rights of those who may come to co-operate in such useful purposes, decrees as follows:

"Art. 3. Any person who may introduce into the country a foreign discovery, will enjoy the same advantages as though he were the inventor.

"Art. 5. The inventor will receive a patent which will secure to him the ownership for the period of from five to ten years from the day of its date. The above time may be extended, and other advantages allowed, if the importance of the invention is of such a nature as to deserve an extraordinary protection on the part of the government.

"Art. 7. The owner of a patent shall enjoy the exclusive

privilege of the same, and of the fruits of his discovery, invention, or improvement, for which it was given him.

"Art. 9. Every owner of a patent will enjoy the right of opening establishments or stores in various parts of the Republic, subject to such restrictions as may be previously communicated to him. He may also authorize others to apply and use his means, invention, or secret, and dispose generally of his patent as he would of movable property.

"Art. 13. When the objects or articles of discovery, besides being of public utility, are of simple construction and easy of imitation, instead of an exclusive privilege of a patent, the inventor may ask for a compensation which may repay him."

Señor Gelly, then Minister from Paraguay to Brazil, sent a letter, December, 1848, to Mr. Hopkins, (original produced and acknowledged by Señor Berges, Paraguayan commissioner, to be the handwriting of Gelly,) saying:

"In the said decree President Lopez has resolved all questions which could arise in regard to privileges and premiums. If you introduce into the country machines or new means of industry, which the country does not possess, this decree gives you the monopoly for ten years at least, and you do not require a special concession. You have visited the country twice; the first time as an especial agent of the government of the United States, the second time as an explorer. You have enjoyed the sympathy and the estimation of the generality of the inhabitants of the whole country. You know personally, the most distinguished members of all classes. You have been able to observe and judge all persons, and the advantages which the different productions of the country offer. Nothing is lacking to you, therefore, to direct with certainty and good success any kind of enterprise and speculation in Paraguay. In this country, living is easy, commodious, and cheap; the population is numerous, moral, submissive, and industrious; the hands cost but little, and the means of communication are facile. Paraguay will attract many speculators and workingmen as soon as the country shall be better known."

Mr. Hopkins, the agent of the company in Paraguay, had resided and traded in that country nearly eight years prior to the company's arrival, and was always on the most friendly terms with President Lopez during that time.

Expenditures.

2d. The company, induced by these decrees and facts, and by their knowledge of the resources of Central South America, watered by the confluents of La Plata, which were thoroughly understood by its president, Governor Arnold, (see his deposition,) from extensive travel in those regions, sent two expeditions to that country, and have expended and become liable for a sum which, with interest, now exceeds four hundred thousand dollars. The amounts and modes of this expenditure have been shown at great length. The original books of the company and its vouchers have been produced, and its officers and agents have sworn to the truth of the accounts presented.

We quote from record, page 185 :

" With reference to the evidences of accounts adduced and exhibited by the company, Mr. Carlisle repeats and consents to have inscribed upon this record his oral waiver, made in the thirteenth session, 12th July, on the part of the government of Paraguay, of all doubts as to the authenticity of the said accounts. The counsel for Paraguay also admits, in the argument read by him, the wisdom of the company's management at home, and says, if its president, Governor Arnold, had been in conduct of its affairs in South America, the results would have been satisfactory to all parties concerned."

Thus far, then, his Honor Senor Berges, the commissioner from Paraguay, can go with us. He can perceive that American citizens have, in good faith and in good judgment, expended and lost this large sum of money in an enterprise which he will perceive, from its character, would have been of great benefit to his country if successful. And that success was wanting to it from causes of which they are innocent. Had there been no fault or misunderstanding in Paraguay on either side, great benefits would have been realized by both parties. It would not be the policy or the generous wisdom of his government, we respectfully submit, to allow such parties to be the losers in their attempts to benefit at once themselves and his native land.

Liability of Paraguay.

3d. We next come to the question of liability. This we have a right to place also among the admitted points of the

case. Our government, through all its branches, and in two administrations, had decided this question. Congress placed the war-making power in the hands of President Buchanan, to obtain an acknowledgment and satisfaction from Paraguay for the liability. Repeated pacific overtures by negotiation had been rejected by Paraguay. The President was authorized to use force to bring the matter to a conclusion. The commissioner, Mr. Bowlin, was expressly instructed that as an indispensable preliminary to a peaceful adjustment of the pending controversy was the admission by Paraguay of its liability to the company, a convention was made which the American commissioner understood to contain such admission. He writes that he has complied with his instructions in every respect, except the immaterial one of the place of payment. Our government so understood the convention and treaty when and before it was ratified. The Secretary of State says, under date of —, in a letter addressed to the company, that there can be no doubt about the admission of liability. The liability was not denied then by Paraguay. It was understood by our commissioner and government that it was admitted by the terms of the convention. It is so admitted, we think, plainly. And yet, on this trial, the liability is, by the counsel for Paraguay in his opening statement and closing argument, and at all times, in his own words, "utterly denied." It is not to be presumed that this ground is taken, except by the authority of President Lopez. At all events he is bound by it. All we have to say in this connection is, that this denial and this conduct is of a piece with that of which we complain, and which we shall only too abundantly prove from first to last as the cause of all our troubles—the saying and the professing one thing, or at least what we understood, and had a clear right to understand as meaning one thing, and then, when the time of performance comes, after we have acted upon his assurances, saying and doing exactly the reverse. It is unpleasant to be obliged, before this honorable Commission, constituted as it is especially on the part of Paraguay, to say such thing. But it is the ground and body of our case; what we must term the breach of good faith on the part of Paraguay throughout in its dealings with us, and of which this denial at the start in this trial is a striking proof and confirmation. We shall rest on the assumption, in this connection, that our government, which has taken the matter entirely into its own hands in making the treaty and convention, and in appointing this

commission, and has acted wisely and justly, is right in its construction of that which is now brought in question.

Now, upon these facts—first, of invitations by the government of Paraguay; second, of expenditure by the company upon the faith of that invitation; and third, of wrongful expulsion of the company, at the very inception of its success, by the government, from Paraguay—the rules of all jurisprudence entitle us to claim of that government to be made whole for that expenditure. The wrongdoer can not call upon the tribunals to conjecture what calamity might have befallen the company if his wrong had not intervened and destroyed them.

The loss is not merely an establishment at San Antonio or Asuncion, but all that it cost to place our employes and implements in Paraguay, and all that it cost to gather up the wrecks of the expedition, and bring our agents back.

But beyond this pecuniary expenditure, the time, anxiety, and labor incurred, which are not represented by the account, the motives of the conduct of President Lopez, the nature of that conduct, including every form of insult and violence, and the value of our position in Paraguay, as the pioneer of its commercial, manufacturing, and agricultural development, and as entitled under public laws to patent privileges of long duration and great value, would give us a large additional sum.

Remarks upon position of the evidence.

Upon this branch of the case, before collating the items of testimony, we will remark, first, that our claims, and much of our testimony, had been brought home fully to the knowledge of the Paraguayan government, if not otherwise, at least by our statement and affidavit submitted to the Committee of Foreign Affairs in Congress, and appended to their printed report. This document was the subject of criticism in the *Seminario*, as early, at least, as May and June, 1859. Indeed, Paraguay does not complain here that she has not had ample opportunity to meet the case. President Lopez, in the language of counsel in his opening statement in this case, was "bred to the law;" "the productions of his own pen, which the undersigned has had the advantage of seeing, shew him to be an accomplished scholar and a man of enlightened and vigorous intellect." He is therefore competent to prepare his case; and those points which are not met in

his evidence, must be so left, because they are incapable of defence in a judicial investigation. Now, most of our propositions with regard to the motives of Lopez, the insults and violence inflicted upon us, the novelty of the machinery and implements introduced by us, and the value of our rights and position in that country, are proved by the concurrent testimony of each one of the naval officers of the United States exploring expedition, now in this country—Lieutenants Powell and Ammon, and Engineer Lamdin—by the testimony of defendant's witness, Ferguson, by that of the six Paraguayan exiles, by the published report of Captain Page, by the intelligent and full account of Mr. C. E. Hopkins, to say nothing of Morales. And to all that testimony upon these points, there is absolutely no attempt at reply or contradiction in evidence on the part of Paraguay, except the official communications of that government to ours at the time. Where these statements of President Lopez and the despatches of Consul Hopkins differ upon questions of facts, we shall be compelled to the unpleasant duty of showing the unreliability of the former. So, also, from the *Seminario*, the official organ of President Lopez, we shall quote some statements, and contrast them with undoubted and proved facts in this cause.

The difficulty which this company have had to encounter in obtaining the judgment of all fair-minded officers of this government, (which difficulty has, in every instance, been at length triumphantly overcome by force of the truth and right of their cause,) has arisen from the natural confidence of our American minds in the truth of official representations. Captain Page believed in the friendly disposition of President Lopez, and put the blame of the controversy upon Hopkins. He subsequently, with more experience of the former, changed his mind. He says experience taught him that he could put no confidence in the statements of Lopez.

From Captain Page's despatch of September 29, 1854:

"These constant annoyances and obstacles, after the assurances given me, have induced me to address myself to the government in writing, having very little confidence in its declarations to me verbally. The personal intercourse which I have always had with the President was had at his request. It was a convenience to me, my duties here requiring me to communicate with him frequently, because nothing can be done here without his sanction, however unimportant. This kind of communication suits his purposes better, because, in

case of a difficulty arising, his public acts may not accord with his private assurances in any particular."

Further, in his despatch of November 5, 1854, he says:

"He also depends much on his false and empty professions and assurances of a desire for the maintenance of the most friendly relations with the United States. I myself believed, at one time that there was some sincerity in these professions, but I have seen more of his course, and have become better acquainted with the feelings and policy of his government. His hostility towards Americans is a fact beyond doubt, his assurances in his official communications to the government of the United States to the contrary notwithstanding. His policy is to lull the government into the belief (by his official professions) that he desires the maintenance of the most friendly relations. Yet, at the same time, in his official organ, he seeks occasion to hold up to ridicule, to slander and misrepresent America as a nation. These abusive attacks are well known to emanate from the President himself. The government editor would not dare insert in the paper any article or writing which he did not know was either the production of President Lopez, or had his revision and sanction for publication." * * * * *

"Of low, vulgar abuse, which would disgrace the most contemptible sheet in the country." * * * *

"But such is his apprehension of being held responsible for his course towards the Americans who have been compelled to leave his country, that he will stoop to any falsehood and misrepresentation to make his appear the right cause in this case."

How different his final conclusions from his first impressions, derived from his interviews with Lopez!

Lieutenant Powell, who was left in command of the Water Witch at Asuncion, testifies the same thing, in these words:

"Question 10. Did you find that his (Lopez's) assurances and statements could be relied upon as true?"

"Answer. In my opinion, they were unreliable when conflicting with his own interests."

Again, page 91 of record: "These promises, as will appear from the correspondence of the commander of the expedition, were also repeated to him upon his return to Asuncion, but were never complied with." (See, further, quest. 9, hereafter quoted.)

This change came over minds preoccupied against Hopkins,

but minds, be it observed, which at no time believed Hopkins capable of untruth. So Secretary Marcy, through the address and violence of Lopez in retaining C. E. Hopkins, bearer of his brother's consular despatches, in Paraguay, until some fortnight after his own had left the country, had answered Lopez's communication before Hopkins' account of the matter had been received. (See Hopkins' deposition, pages 64 and 65.) His letter to us is a vigorous argument against us. His subsequent despatches have all the more weight, for they are again an instance of a mind changing its first impressions. Though we have not evidence to show the changes in the minds of others in the department and in the committee, we show their judicial and final judgment, to be obtained only by the presentation of conclusive evidence, and containing the severest condemnation of the conduct of Lopez.

In this connection, also, we are compelled to speak of the despatches of Mr. Commissioner Bowlin, for his misapprehensions come from a similar cause. Our case had never been presented to him by us. Of the amounts and modes of our expenditure, of the treatment we had received, and of the value of our position, he had nothing from us. How his ungenerous suspicions of our accounts contrast with the admissions of the counsel of President Lopez! This may be considered a test of his judgment in the matter.

We had no communication with him except by the written papers which are before the commission, in which we endeavor by calculation to illustrate the value of our patent rights, and suggest a plan of settlement by which these rights might be restored to us in conjunction with Lopez. We also declined to entrust him or any one else with the discretion to take less than half a million dollars for our claim in compromise. That we, knowing our own case, preferred the certain delays and expenses and the uncertain results of a commission to adjust the amount to any sum less than that should certainly have suggested to our American commissioner that we had an honest confidence in our claim. The judgment of the department, was, also, that the minimum sum to be paid should be half a million dollars. (See instructions.) Again, we had no agent or friend to accompany the expedition. It might have been well had we been thus represented. Mr. Hopkins was not allowed to go up to Paraguay. Commissioner Bowlin, therefore, heard nothing of our side of the case. On the other hand, it appears by his despatches that

he was at Montevideo, and not on the intelligent, commercial side of the river—Buenos Ayres. He was but nineteen days in Paraguay. He says, in his despatch, "I arrived on the 24th ultimo, and I had substantially settled everything on the 1st instant." He was, according to his despatches and letters published, most cordially entertained by Lopez, Urquiza, the Brazilian minister, and others, and received one of the most magnificent presents ever sent to an American official by a foreign potentate, at the hands of President Urquiza. He went, offering peace and kindness, as was right. He should take care lest the rights of persons and property, for the protection of which governments are created and officers appointed, should not be prejudiced by his action. They have not been, for he obeyed his instructions. And, as against his views, we submit those formed in the Department of State, after long investigation of the case on both sides, as made out by the despatches and the *Seminario* of Lopez, and the imperfect presentation by American citizens, who had no claim to attention then, except their unpleasant position as sufferers, and their characters as trustworthy men. The eminent ability, we may be permitted to say, the thorough and masterly knowledge of the whole controversy, displayed in these instructions, as well as the source from which they come, far outweigh the unfavorable suggestions of Mr. Bowlin. Again, if Mr. Bowlin is relied upon as a witness against us, we submit he should appear as every other man now in the country whose statements or evidence have been received. Cross-examination would show the sources of his misapprehension, and the supposed state of facts from which his opinions arise. We should find that he, like others, has been at first misled by the erroneous representations received directly or indirectly from the government of Paraguay. What he heard from others during his short stay in Paraguay stands in striking contrast to the statement of Captain Page as to the state of the public mind in those regions, with which the latter had the amplest opportunity to become thoroughly acquainted. And should Commissioner Bowlin read the admission of Mr. Carlisle on the record as to the company's accounts and this denial of his admission of liability in the convention between himself and Lopez, would he not have the best of reasons to believe that he somewhat misplaced his confidence in his short visit to Paraguay?

Motives of Lopez's conduct.

The motives of the conduct of Lopez, and the *animus* of the wrongdoer, are apparent. They were to aggrandize himself, and to exclude our enterprise, whose success would enrich others than himself. This is apparent: 1st. From his position in the country as its despotic ruler, and directly or indirectly seeking to become the monopolist of its business and wealth. That this is his position, the testimony of every witness—C. E. Hopkins, Hale, Morales, the American naval officers, Powell, Lamden, Ammon, the eight Paraguayan exiles, the published reports of Commander Page, the official despatches of the department, the statement of Page and Guillemot, on page 64, Senate report—conclusively show. That this is his position is left uncontradicted by the testimony for the government of Paraguay.

That such were his motives, is shown not only by the argument from the nature of his relations to the country and its people, but by the judgment formed at the time and place by disinterested and competent men. (See statement of Commander Page and Guillemot, page 64, Senate report, that such was the general understanding at the time throughout the country of La Plata.) And Lieutenants Powell and Lamden say:

Lieutenant Powell.

Question No. 7. What was the cause of the change of treatment of the company by Lopez and by the people?

Answer. It was owing to a fear on the part of Lopez that his authority and his pecuniary resources would be weakened by a commercial company of the capital which that was supposed to represent operating in the same field with himself. His (Lopez's) conduct was, as I have said before, probably hastened by injudicious conduct on the part of Hopkins, but I do not believe that any independent man, acting as the agent of a company, could have done more than stave off the result, for a certain length of time, or to have saved more than a portion of their interest.

Question No. 8. Do you mean to be understood as giving your opinion that Lopez would have broken up the company even if their agent had been free of fault?

Answer. I do.

Question No. 9. Was there a change in the mind of Cap-

tain Page, your commander, and others, in regard to President Lopez, while you were there? If so, what was the change, and the causes of it?

Answer. I cannot undertake to say what was the change in the minds of others. In my own case there was a change of opinion as to his (Lopez's) character, from his conduct during that difficulty, and subsequent to it. Previous to that difficulty, I had looked upon him as a man inclined to liberal views, and to the enlargement of the commerce of his country. But his conduct at that time caused me to believe that he only wished to do so to a very limited extent, and that when he found that free intercourse with foreigners was leading to free thinking among the people, and would conflict with his own interest and that of his family, he determined to check it.

See also cross-examination 3, 4, 5. Lamden says:

Question No. 7. What was the cause of the change of treatment of the company by Lopez or by his people?

Answer. The impression was, among the officers, and I shared it, that the President found that the American company were making too much money, and that his object was to get them away and take the business into his own hands.

But the motives of Lopez's conduct are shown most plainly in his acts. Morales, the superintendent of the cigar factory, who, from his experience in Havana and New York, had become qualified and did introduce many new processes and implements in the manufacture of cigars into Paraguay, had testified, as appears by his printed affidavit annexed to the Senate report, "that propositions have been made to me by Nicholas Vasquez, the confidential judge of peace and man of all work of President Lopez, to seduce me from said company, promising me, on the part of the government, all facilities which I might want to carry on the business for myself of the cigar factory, provided I would leave the employ of the said company."

Captain Page (page 64) had also certified that "on the breaking up of the American company, one of President Lopez's sons immediately went into the cigar business with these same operatives." This charge is repeated in the statement of the company annexed to the report, and the name of the son Benancio is given. This endeavor to induce the employés of the company to leave their service and enter his own is mentioned in the report also.

To the truth of this charge, Morales, produced in person here, testifies quite fully and amply, saying: "In the month of May, 1854, application was made to me by Judge Vasquez, a confidential officer of the President, now Secretary of State, to leave the company, and go into the same business separate from them. He said I should be furnished with all the money I required, and that it would be for my interest to leave the company. He tried often to convince me that it was best for me to leave the company, saying, 'you know the Spanish better, you know the business better, and you can make more money.'" He further testifies that another offer of fifty thousand dollars capital, from a relative of the wife of President Lopez, was made to him, and, like the others, declined.

Now, to all this, so important in its character, so circumstantially charged and brought home to the notice of the government of Paraguay, and so easy to be denied, if untrue, by Vasquez, by Garro, and Benancio, so fully proven at this hearing, no evidence is offered in reply. It stands a proven fact, showing the purposes of the government in regard to the cigar business; and it is in conformity with all the testimony as to the motives of Lopez in his whole conduct towards the company.

Decrees.

If there was nothing in the case but the published decrees and the story of their execution, there could not be a more complete instance of wrongful expulsion; and all, it must be remembered, *ex post facto*. "All meetings of foreigners, except for the ostensible object of visiting and innocent diversion, are forbidden by day and by night," and that applied to a company who had some twenty odd men about to arrive in a second expedition to join those of the first, and would naturally increase its numbers, and if necessary employ American labor in place of Paraguayan. They might not meet for purposes of business, though invited to the country by liberal inducements in public laws. "The use of any foreign commercial firm in the Republic forbidden, without the express knowledge of the Supreme Government. It has been suggested by counsel that knowledge here imports consent. Be it so; what then? An American could not use the name of his firm, or his own business name, without the consent of the government. Such a decree would be

none the less despotic, because petty—none the less a wrong to the invited foreigner. He must use and take such a name as government shall permit. The change does not, we think, improve the decree. The Spanish word *conocimiento* means “knowledge,” and has ever been so rendered in all the translations of this decree and correspondence concerning it. Had not Mr. Hopkins obtained at the corners of the streets the knowledge of the decree, he might not have given, within the three days limited for applying for a license, the formal knowledge, which it is admitted he did to the government, of his title and office, and thus have lost his right to a license under the new decree, to which we next refer, if indeed that decree could affect his rights: “Every industrial or commercial factory unlicensed will be shut up if the persons interested do not take out a license within three days.” This, after many months of opened and continued and encouraged business. There is no evidence of any prior law requiring such a license. If there were, it certainly had been waived by the power competent to waive it. But we applied for the license. It was refused, because Mr. Hopkins signed the title of which he had given formal notice, and which had been recognised often by the President himself.

An application for other licenses was made, signed “*Per E. A. Hopkins.—M. Morales.*” These, though customary forms, were refused upon frivolous pretexts. These applications, with the endorsements made upon them at the time of the transaction by Mr. C. E. Hopkins, and sworn to also by M. Morales, are before the commission. The proceedings under the decrees themselves, are the little evasions of a power which dares not do openly what it is determined to effectually. By a robust Saxon mind they are not easily traced or credited even. The more minutely and closely this business is studied, with a true appreciation of the character of the parties engaged in it, the more transparent will the utter breach of good faith appear, and the thin veil of legal form over illegal act. We should be willing to trust the case to the simple reading of all the decrees in the order of their publication, bearing in mind the proper confidence to be reposed or refused to their recitals of facts. We leave them to judicial examination and to judicial judgment. Only when the last act required physical and open force did Lopez, through his minister, make up his mind to brave what he termed “the gilded guns of the Americans.”

Insults and outrages.

As to the sabre blow of the Paraguayan soldier upon Clement E. Hopkins, and other outrages and insults to Americans: The statement of Mr. Hopkins has been given before the commission. He has been examined and cross-examined at length. We submit that the commission will have no doubt of his truth. The Paraguayan government has presented no counter proof. The affidavits taken *ex parte* and transmitted to the Department of State, pretend that Mr. Hopkins, then an invalid, riding on horseback in company with a lady, rode violently into a drove of oxen and dispersed them, and then the soldier struck him, and he answered with blows and curses. (See page 9, Falcon's despatch.) It is incredible in itself. Ferguson confirms Hopkins in saying that after he had stopped his horse, and while conversing with the lady, the soldier from behind struck him, without a word or warning, a blow with the flat of his sabre. Whether directly in the herd, or up to them, or on the side, is immaterial. The latter the most probable. Hopkins swears to it. Ferguson indistinctly recollects his flying words in conversation, and has no memory to favor Hopkins, certainly.

The government of Paraguay, in fact, confirms Hopkins, by ordering the soldier punished with three hundred lashes; of the execution of the order, however, no evidence was ever given — a fact easily proved, then and now. This was not the beginning of the trouble, but one of the occasions used by the government to create an outbreak. Mr. Hopkins very properly speaks in his letter to Mr. Falcon, calling for satisfaction for this outrage, of the series of insults and annoyances to which the Americans had been subjected, and which we have proved in this case. Mr. Falcon pretends ignorance of them. The correspondence will doubtless receive the careful perusal of the commission, and Mr. Hopkins' treatment of the subject in controversy will be found the most triumphant. What confidence can be placed in official communications from this source, when we find this professed ignorance of facts so notorious and so thoroughly proved as the insults and annoyances to Americans in Paraguay?—annoyances, in the midst of which, long continued, it would be impossible to live. The wife of our general cashier had, from this cause, been compelled to return home;

called by gross names in the streets; missiles of every offensive kind thrown into the windows of the office and houses;—more abundant than ever when under guard of soldiers. An American knocked down by a stone from behind, another struck with a sword; forbidden by a new decree to carry any defensive weapons; friends and acquaintances requesting, for their own safety, a discontinuance of social relations; landlords requiring their premises; market-people unwilling to sell; servants driven from our employ by the command of the government, and slaves compulsorily taken from us, (see decree of 29th August, '54, quoted in Hopkins' despatch, No. 10;) abuse, beneath that of the most contemptible sheet in this country, heaped upon the Americans in the official paper, (see pages quoted before, and the columns of the *Seminario*,)—What life is under such circumstances none can know, unless they have been similarly placed. This conduct, stimulated by the government and caused by it! Now, this is most abundantly proved in the affidavits in Hopkins' despatch. The despatch did not reach Secretary Marcy until after he had answered Falcon's despatch. He could not, until compelled by proof, believe that such things could have occurred in Asuncion, and yet Mr. Falcon denies it. After proof of this unreliability, and of other things, Mr. Marcy changed his mind. How fully this conduct and the source of it have been proved, we need not say to the commission. Too full, too abundant, to need citation. No explanation or contradiction in evidence. Counsel may pass lightly over it, but a judge, feeling the responsibility of doing right, will attentively consider it. A manly and positive decree of expulsion by the hands of the police or soldiers, is no more a forcible expulsion than such conduct in such a community and by such a government. The willingness that we should leave, and the withholding of passports in the attempt to extort from us our papers, which might be and have proved to be the most valuable evidences of our rights, and his wrong, are of a piece with the rest. Then the pretence that they were willingly sent, when obtained by the at last firm position of Com. Page, and finally the essential characteristic of misstating the conduct of that officer, averring a rudeness of conduct impossible on his part, as well as denied by him.

Counsel indulged in some play upon words with the plain seaman, Captain Potter, as to a forcible expulsion, and yet asking for and taking passports. The victim of tyranny in Naples, we should properly say, was driven from his country,

though to get out he had to ask for passports. The old decree which forbade the Greek wood, fire and water, was a decree properly described as condemning him to exile or death. The force which closed the cigar factory, and the San Antonio, we take to be force, though no blow was struck or weapon used. Mr. Hopkins may use one form of expression, he and Mr. Carlisle may argue, but to a plain and honest judicial mind, the decrees, the treatment of the Americans, was an expulsion from the country. We rely upon the full accounts of Captain Page as to the events under which the Americans left, and their position at that time, with the caution that the statements made to him by Lopez shall be credited to just the extent to which he, Captain Page, found them worthy of credit.

San Antonio Expulsion.

That we were expelled from our establishment at San Antonio by force, by the high officers of the government, and by the direct order of the President; that our machinery and implements were carried away under his orders, and disposed of at auction or otherwise, as he saw fit; that the workmen were commanded to cease working in our employ then; the cook taken away summarily by the orders of the authorities; and that the country people even ceased to furnish provisions, as they had been accustomed to do, is not denied. Ferguson, their witness, re-affirms his affidavit, and in his deposition here given, leaves the fact and mode of our expulsion from there beyond a doubt. Boyd and Morales concur in this testimony, and so Lopez's decrees filed by him confirm it.

Now, what is the justification given for this?

We quote from the *Seminario*, of——, Ex. 73, in reply to President Buchanan :

"Message to Congress.

"Nevertheless, in order to proceed with entire legality in the matter, and to prevent ulterior reclamations, Hopkins was notified to present at the government office any evidences which he might have obtained from the civil notary's office, of any purchases of lands that the government, for just reasons, could not approve; and it ordered Hopkins to be summoned, and had it noted by the civil notary in the original writings.

"We proceed to the proof in justification of this step. Hopkins had deceived Dona Elenturia Bedoya, widow of Don Ramon Zelada, into selling him a piece of land which was exclusively the property of her minor children, who had obtained it by paternal inheritance. He had abused the ignorance of the widow, who was incapable of making this sale without a previous notice of its utility, and without a judicial mandate, as Hopkins had been admonished by the civil notary; but this delegate of justice was also deceived by Hopkins saying, in reply, that he could proceed to purchase the ground, owing to the existence of a verbal order from the President in his favor, which authorized the deed of sale to him without the intervention of the defender-general of minors being requisite.

"Hopkins refused, with the greatest contempt, to receive back the price of the ground, and consequently this money was appropriated for the benefit of the poor in the prison. Contravening the supreme act of August 23, 1854, he purchased other pieces of land without taking possession. The government could not regard with indifference such disrespect to the law, and the term of six days, which is set down in that regulation, having expired, these lots of land were adjudged to the State, their values being ordered to be charged to the account of Hopkins' debts to the State."

He says that his conduct, to avoid ulterior reclamations, was grounded upon the alleged fact, that the sale of the land to us, which belonged to minors, had not been sanctioned by the judge of probate or defender-general of minors; and that the scrivener had been surprised or deceived by Hopkins into making such a deed without such sanction, by representing that the President directed it to be dispensed with. Now this defence set up by President Lopez is shown by the original deed here produced, to be an unfounded pretence. (See its translation in Senate report, page 80.) The official guardian of minors did intervene, and moreover, joined in the deed. How came this pretence to be set up? The defender-general of minors had deceased. Hopkins, in his hurried notes in reply (allowed but a single day) to the many alleged grounds for the decree at the time, had not brought out this fact. We had the deed, Captain Page having sustained us in the right to carry them off, though Lopez at first refused our passports, unless they were surrendered, (see Page's despatches,) and probably did not know their contents. Thus the ground of his action set up in his official

organ, in reply to the President, is shown to be utterly untenable. Again, had the fact been otherwise, by what right should the President interfere! The parties concerned did **not** complain. They had received fifty per cent. more than the adults for their portion, and (here comes in the ten dollars paid to the widow to make her portion equal to the minors') besides, no compensation was offered for improvements and expenditures, which amounted to thousands.

It is said also, now, that the land was the site of the government barracks. Very well. It is admitted in the Paraguayan proceedings, that the land did not belong to the government. They take it, and pay rent for the past occupation. We bought it and paid for it, without, however, at the time of purchase, supposing that it included the barracks. (See Hopkins' notes, No. 7, his objection to decree.) The barracks had been leased to us for two years, (see C. E. H.'s deposition, and E. A. H.'s despatch, and Ferguson's closing testimony,) just as the money was loaned to us for two years. We had a right to occupy them until that time expired, owning the land, and the barracks having been conceded for that period. It is said we put up new fences; of course we had a right to do so on our land. But we did not enclose the barracks, (or any property during our rightful exclusive possession,) only enclosing some of the land which had been open, changing the route for a way across it, without complaint from government. But these things are too small to dwell upon as grounds of confiscation. They are not even mentioned by President Lopez, an able and intelligent man, in his *Seminario* reply to the message of President Buchanan. Again, he had a full knowledge of the transaction as it progressed, and assented to it. C. E. Hopkins says:

"Another subject of conversation was the documents for the San Antonio property. Extraordinary delay was practiced by the notary public and civil judge in the preparation of these papers, and though the company were in actual possession of the property early in November, it was not until the following March that the documents were signed, sealed, and delivered, and the money paid in full. That the President was aware of all the steps taken in the negotiation must be evident, as the notary and the judge, like all the subordinate officers of the Paraguayan government, are directly responsible to the President, and dare not take any important step, such as the consummation of so important a sale as that of the San Antonio property was considered to be, and which

had been five months in progress, without direct orders from their superior. I had occasion, when afterwards acting vice consul, during the absence of Mr. Hopkins, to call the President's attention to the delay in the drawing of the papers by the notary; and he put me off, by saying that there was time enough to arrange all that, and that it was a tedious matter to arrange and copy all the documents in a case where so many persons were interested. The subject of the licenses for the saw-mill, warehouse, and cigar factory, was also spoken of; and Mr. Hopkins always understood the President to say that he excused him from these formalities as a matter of special favor."—Record, page 63.

Question No. 7. Did you have a personal conversation with the President about the San Antonio deeds?

Answer. Yes.

Question No. 8. Were the company then in possession of the land?

Answer. Yes.

Question No. 9. Did the President know it?

Answer. Yes.

Question No. 10. What did he say about the deeds?

Answer. He put me off, by saying, generally, that it was a long job, and that there was plenty of time.

And moreover, when the government, on the 7th August, proposed to buy the land of Hopkins, fixing thereon a price, a mere cypher of its then value, he admitted the pre-emption right to purchase the site of public works. but wished time to make a proposition in reply. On the 11th August, Lopez withdrew the offer to buy, and declared his title null and void, and proceeded to eject him, and take the land to himself for the government. (See paper filed by defence, 2 A.)

Without the use of that part of the land including the barracks, the only house for our men and the shelter for our machinery, the establishment must stop. The eviction turned persons and property out of doors. It was suggested in argument that Lopez had the right to revoke the permission to use the barracks. He had no right to annul the title to our land, and eject us for that. Nor, as we understand law and justice, as administered in any court, however strict, still less in one constituted like this, can a party revoke an act, upon the faith of which another has made expenditure, without making him whole. The wholesome doctrine of equitable estoppel, adopted by the common law from courts of equity, preclude such conduct. It was a lease for two years, and

not at will. The right claimed to revoke the lease, upon the faith of which we were established at San Antonio, is another illustration of the breach of justice and good faith which is the substance and body of the case.

Upon being served with the decree declaring his purchase of the 2½ cuydaz of land void, and ordering the vendor to return the purchase-money, he replies, according to the record produced by defendant, as follows:

"Mr. Hopkins has the honor to inform Mr. Vasquez that he will send an authorized person at 3 p. m. to receive a copy of the deed mentioned by him. This person will have no authority to receive any money, as Mr. Hopkins has nothing to do with any money paid to Douce or Madam Bedoya, for a part of the San Antonio lands, belonging to the United States and Paraguay Navigation Company, which he purchased for them as their general agent. He refuses positively to sell the said land. May God preserve the honorable judge many years!

EDWARD A. HOPKINS.

"ASUNCION, August 18, 1854."

This reply is thus described in the decree which followed it as an impertinent reply, "exhibiting an unparelled boldness and an unaccountable grossness, when he might have exercised decency and politeness;" and that he would not "hesitate to insult the government in the most impudent manner." This decree the public saw; the letter they did not. Both now appear in the judicial proceedings. The language adds insult to injury, and illustrates upon what slight ground hard words are used in accusing Hopkins.

This charge about obtaining this deed without the intervention of the guardian of minors, is on a par with the charge against Hopkins of smuggling. The original permit having been produced and filed in our Department of State, and the testimony of a crowd of witnesses, (see Hopkins, p. 7, dep.,) the charge is abandoned.

So the fancy sketch sent to our government, of the river at Itapiru. So the grave reasons for refusing to ratify the treaty, the thirty-three important charges, as they are described in the *Seminario*, consisting of changes of the words North America, Union, and similar phrases, to that of our legal title, United States of America.

In fact, no specific charge is made against Hopkins which does not utterly fail. Vague talk and abuse cannot be an-

swered. But we commend the terms of his notes and those of the government to him, to the perusal of the commissioners, if, indeed, they deem it necessary to trouble themselves with this part of the case.

If Mr. Hopkins deserved the language applied to him, if he did act in the matters of the company in any one respect wrongfully, it certainly could be shown by evidence from Paraguay. There is no attempt to produce any. Powell, with whom he had a controversy, said that his (Hopkins') reputation in the navy was that he was egotistical and presuming. He had for years left the navy. Ferguson, who stands in a peculiar position in this case, was originally employed to go to Paraguay, by the consul of Paraguay at Buenos Ayres, and by his brother and partner, Decoud, who went to Europe with the son of Lopez, both believed to be partners of Lopez. He says he was not personally insulted in Paraguay; but in the same breath he says, in his affidavit annexed to Hopkins' despatch, 207, that he well knew the notorious fact that all the Americans were insulted and abused. He signs many documents at the time, confirming and concurring in all our complaints, and his private journal expresses the same view of the relative conduct of Hopkins and Lopez. Something has changed his impressions. Perhaps it is nothing more than the fact, which he admits, that he had a violent quarrel with Hopkins at parting, and is now his enemy. Such a man, of all the residents of Paraguay, native and foreign, is the only witness cited to instances of Hopkins' misconduct. Once striking a man with a whip on the highway, again punishing severely a worthless slave who had repeatedly run away. The explanations of the first made by Hopkins are forgotten by this witness. Is not the fact that this important branch of the defence is left to such a witness the best proof that there is nothing in it?

Company to be Expelled.

Again, it is said that the opposition of the government was a personal one to Hopkins, and not to the company:

1. This, if true, cannot justify the action of the Paraguayan government.
2. There is no evidence of it; but the verbal statements of President Lopez to Commander Page and Lieutenant Powell, both of whom have put on record their experience, that such statements and assurances were utterly unreliable.

3. He carefully avoided giving us any written statement to that effect on proposing a change of agency.

Lastly, his own decrees here produced by the defendants prove the contrary. They say, No. 2 B, in the decree of 20th September, 1854, according to their translation: "It being understood that, by reason of the outrageous proceedings of Hopkins, the company he alludes to cannot go in on this country unless it is under the formal approbation of this government, given with a full knowledge of the company and its rules." This, however, is wrongly translated; the true translation is given in Hopkins' despatch: "In the understanding that, with the example of such outrageous proceedings on the part of Mr. Hopkins, the company which he mentions can not continue in the country unless he shall be entirely excluded from it, and it be placed under the formal recognition of the government, *upon bases which it may think fit to establish*, in order that, hereafter, the outrages and excess which have given rise to this measure may be prevented." The company could not stay there, except upon such new *ex post facto* terms as Lopez chose to establish. What these would be, can only be imagined from those he had been recently making. The company could not stay but upon new terms. Is not this a destruction of existing rights? To be completely pliant to his mere will and pleasure, so well described by Lieutenant Powell, is the condition of their continuance. The contract between Hopkins and the company must be broken at his will; no one was authorized by the company to do it—none to take his place, and he be completely excluded from the company. No breaches of law are committed by him. Are such decrees consistent with our just rights? Hopkins was the head; therefore, the chief object of hostility. But the company must go.

We will now cite some of the evidence from disinterested sources as to the value of our position in Paraguay, the resources of that beautiful and abounding country, and as to the patent rights we had acquired in those resources.

William M. Powell—Record, page 118.

Question No. 1. Please state the resources of Paraguay for the development of wealth by an American commercial and manufacturing company.

Answer. I consider the resources of this country, from a cursory examination of it in its present condition, as very

great. In an agricultural point of view, it has an excellent soil, producing tobacco, sugar, rice, Indian corn, and cotton, in an extraordinary degree, and many other articles, such as dye-stuffs, &c., all of which may be found in published articles from reliable persons, to a more or less extent. In regard to machinery, there is scarcely any of it yet in the country, the agricultural implements being of the most primitive kind, and the saw-mill brought there by the company being, at the time I left the country, the only piece of machinery that was not worked by animal power, that I know of, in the valley of the La Plata. In the northeast section of the country, where sugar was produced to a considerable extent, where the yerba was pulverized by sticks in the hands of laborers, there are running streams of water, of sufficient velocity of current to make it a fine location for applying its power to the different kinds of machinery for which we are in the habit of using it in this country. (See also No. 2, hemp; No. 3, India-rubber, now so costly. See Hartshorn's testimony: 4, oils; 5 and 6, woods; and 8, steam navigation.

Question No. 7. Were the following articles of machinery known or used in Paraguay prior to their introduction by the United States and Paraguay Navigation Company? (A list, marked 37 in the company's communication to Commissioner Bowlin, reciting various articles shipped, was here shown to witness, who examined the same, and made the following answer:)

Answer. To the best of my knowledge, none of these instruments were in use, excepting carpenters' tools, blacksmiths' tools, hand-saws, and some varieties of clocks.

Question No. 9. What would have been the opportunity for the navigation company to obtain a leading interest in the commerce and manufactures in that valley, and to have acquired wealth, had they been allowed to prosecute their enterprise?

Answer. A responsible company, under judicious management, with the opportunity of free trade in that valley, should have accumulated untold wealth.

Daniel Ammon—Record, Page 130.

Question No. 5. What are the resources of Paraguay?

Answer. The national resources are timber; its climate is favorable to all intertropical productions. The yerba is among the most valuable of these. The soil is fine.

Question No. 6. Is its climate healthful or otherwise?

Answer. Entirely healthful for an intertropical climate. (See No. 7, hemp; 8, tobacco; 9, India-rubber; 10, gums; 11, woods.)

Question No. 19. How valuable would have been the position of the American company in Paraguay, for manufacturing and commerce, if allowed to prosecute its business?

Answer. I can only answer that in a general way, not being a business man. I can only say, that there would have been a great profit in cutting timber, sawing, planing it, and throwing it into market. I do not know the organic law of Paraguay. If uninterrupted or encumbered with moderate duties and rights from the government in any employment of machinery, they could not have failed to be highly profitable. Commerce, only moderately embarrassed by government for its own benefit, must be valuable.

William J. Lamdin—Record, page 134.

Question No. 1. What were the resources of Paraguay for development by an American manufacturing and commercial company while you were there? State fully and particularly.

Answer. I do not think they could have been better in any country. The woods for building and manufacturing purposes were excellent, and for fuel I have never seen their equal. As an illustration, we had wood on the Water Witch for fuel, a cord of which developed as much power upon the engine as a ton of the best anthracite coal. The soil could produce almost any thing grown in tropical climates; they wanted but machinery and enterprise to develop the resources of the country. The quality of the tobacco was excellent, the soil well adapted to its growth, and to that of corn also. I saw the India-rubber tree. Hemp I saw also in small portions, the texture of which was very fine. The climate very healthy.

Question No. 2. Were the farming implements and other machinery introduced into Paraguay by the American company, unknown there prior to that time?

Answer. Yes, I never saw any prior to the time they were brought there by the company.

Question No. 3. What would have been the value of the position of the American company for farming, manufacturing and trading purposes, if undisturbed by the government.

Answer. I can't tell what would have been the value; but its opportunities for accumulating wealth would have been very excellent, and Paraguay has the finest rivers in the world for steam navigation.

Alexander Ferguson—Record, page 156.

Question No. 36. What, in general, were the opportunities in Paraguay for an agricultural, manufacturing, and commercial company to acquire wealth?

Answer. Could not say as to the opportunity; but the chance, *if undisturbed by the government*, would have been very good. There were many branches into which the introduction of industry, aided by machinery, must have given profitable results. There was the *caraguata*, or wild hemp of the country, so abundant that we could not get it out of our way. There were gums and woods in great variety, some of them at San Antonio, where I remember a few large co-paiba trees on the place, which, however, are not good for timber.

Ferguson's testimony will repay perusal, as to the resources of Paraguay and the novelty and value of our machinery and implements.

We quote C. E. Hopkins' affidavit on this subject, filed in the Department, having offered to recall him for cross-examination by defendant's counsel. (See record.)

Clement E. Hopkins, being duly sworn, deposes and says:

That he is the city editor of the New York Daily Express newspaper, and resides in the said city of New York, at No. 20 Varick Place.

That in the month of March, 1853, he sailed from the port of New York, in the steamer *El Paraguay*, with the first expedition of the United States and Paraguay Navigation Company; that said steamer belonged to said United States and Paraguay Navigation Company, and was the first side-wheel merchant steam vessel that was ever advertised to go to Paraguay.

The *El Paraguay* was condemned and abandoned on the voyage, but the deponent accompanied the expedition to Paraguay by other vessels.

At Buenos Ayres, in September, 1853, the general agent of the company chartered the American built side-wheel steamer *Fanny*, of about six hundred and fifty tons burden and nine and a half feet draft of water, and deponent proceeded in her to Asuncion, Paraguay, she being the largest

vessel that had ever entered the Paraguay river, and the first merchant side-wheel steamer ever seen within the borders of that country. She subsequently plied between Buenos Ayres and Asuncion, consigned to the United States and Paraguay Navigation Company, which was the commencement of steam navigation between the two ports. She was succeeded by an American-built propeller, called the Buenos Ayres, sailing under English colors, which vessel continued in the trade long after several Paraguayan and other steamers had been put upon the route.

No attempt at regular steam navigation on the Parana and Paraguay rivers had been made prior to the management of the steamer Fanny, by the United States and Paraguay Navigation Company, which proved the great profit and advantage of the business; but steam communication has been maintained ever since, and a large and valuable carrying trade in steam vessels has grown up.

With the exception of about three weeks, the deponent remained in Paraguay from October 11, 1853, the date of the arrival of the steamer Fanny at Asuncion, on her first voyage, until September 9, 1854, a few weeks before the final expulsion of the company. During his residence in Asuncion and the neighborhood, he was cognizant of all the doings of the company, and was personally acquainted with nearly all the details of the company's business.

The Cuban processes of making cigars and preparing tobacco for manufacture were first introduced into Paraguay by the United States and Paraguay Navigation Company. In the employ of the company were two practical cigar makers, and a practical director of cigar manufacturing, natives of Cuba, by whom nearly two hundred Paraguayan women were fully instructed in the art of making cigars on the Cuban models. Previous to the introduction of these processes by the company, the tobacco of Paraguay was not subjected to any improvement, and the cigars were of unmarketable appearance and unequal quality.

The United States and Paraguay Navigation Company imported into Paraguay, on the steamer Fanny, a saw-mill, which was erected at San Antonio, near Asuncion, and worked by steam power. This was the first saw-mill ever brought into the country.

Previous to its erection, no lumber had ever been sawed in Paraguay by other than handsaws.

The company also introduced and erected an improved

horse-power, the first one of the description ever seen in Paraguay.

The company likewise imported into Paraguay on the steamer Fanny, a planing machine, which was partially erected when the company were driven from San Antonio; the full apparatus for a brick yard, the machinery of which was also in process of erection; a bark mill, sugar mill, and entire apparatus for an extensive sugar manufactory; a number of grist mills, rice hullers, corn shellers, copper-still machinery—all of which were entirely new, and first introduced into Paraguay by this company. Also, a number of improved cotton-gins, the first gins of their description ever seen in Paraguay.

The steam engine of the saw-mill was the first stationary steam engine ever seen in Paraguay.

The United States and Paraguay Navigation Company likewise imported into Paraguay, on board of the steamer Fanny, a variety of American agricultural implements, plows, harrows, hoes, spades, rakes, axes, carpenters' tools, clocks, lamps, cooking stoves, iron furniture of a variety of kinds, light American parlor furniture, and a great number of notions, all of which were entirely new, and just introduced into Paraguay by the company.

The company likewise imported on board the steamer Fanny, and first introduced into Paraguay, a quantity of American tinware.

The general agent of the United States and Paraguay Navigation Company also imported into Paraguay a large and powerful oil press, to be used in making palm and peanut oils, articles of large demand and production, but which had never been manufactured by means of improved power. This was the first power-press ever seen in Paraguay.

This company also introduced into Paraguay the American mule cart and harness, previous to which mules had not been employed as beasts of draft in Paraguay.

Also, American ox yokes, the first yokes ever seen in Paraguay, oxen having been previously tied by their horns to carts. Also, an American carriage and an American top buggy, the first vehicles of the kind ever seen in Paraguay.

Also, full sets of harness for carriage horses, no horses having ever been harnessed or driven with reins in Paraguay prior to the introduction of this harness by this company.

All of which articles, machinery, &c., deponent knows of his own knowledge were first introduced into Paraguay by

the United States and Paraguay Navigation Company and their agents.

And further deponent saith not.

CLEMENT E. HOPKINS.

Sworn before me this 26th day of July, 1856.

R. E. STILWELL.

We have cited all the testimony of all the officers of the American Exploring Expedition now in the country—Powell, Ammon, and Lamdin, of defendant's witness, Ferguson, of C. E. Hopkins, of report of Captain Page—none of whom have any connection with the company—all of whom extol the climate, soil, and agricultural resources of the country, and its opportunities for manufacturing and commercial enterprise. We submit, also, the statement of Governor Arnold upon the subject. And to this view of the matter Paraguay gives no denial or qualification. The value of our position in Paraguay, which holds the key to the wealth of a region surpassing in natural resources the valley of the Mississippi, we leave to the intelligent reflection of the commission.

Patent Rights.

We were not only the pioneer company in that region, but we were entitled to patent rights of immense value. The law which conferred them, we have quoted. The fact that we were the first to introduce into Paraguay very much of the agricultural, mechanical implements, and machinery peculiarly suited to the development of a new country, we have shown by the testimony of Powell, Ammon, and Lamdin, of Ferguson, of the six Paraguayan witnesses, and of Clement E. Hopkins.

To all this testimony no evidence has been offered in reply or explanation. The undoubted fact of our introduction of these articles into Paraguay is admitted by the most expressive silence. But a technical objection is interposed. It is said truly, that the law required an application to made to the government of Paraguay. The terms of the law in this respect are: "Whoever desires to obtain and secure the enjoyment of an industrial property (*propriedad industrial*) of the kind above mentioned, should firstly apply to the Secretary of the Supreme Government, and declare in writing whether the thing he introduces is an invention of his own, an improvement, or only an article he wishes to introduce into the

country ; secondly, he must deliver, closed and sealed, a true description of the principles, the means, and process which constitutes the invention, as also plans, drawings, models, and everything in relation to the same, in order that the said sealed document may be opened at the moment the inventor receives his title of ownership." Two most conclusive replies exist to this objection. 1. That we did apply, and the President said, "That is but a form." You have brought the articles here, and can at any time have the papers executed; or, in the language of C. E. Hopkins, in his affidavit, page 80: "Among other things referred to at various times were the subjects of the patent rights to which the company were entitled by the decree of 1845, for all the articles new to Paraguay that had been introduced by them. The President always remarked that there was no necessity for Mr. Hopkins to trouble himself about taking out the papers; that, having introduced the articles, he had a virtual monopoly of them, for there was no one to compete with him in their importation, and as they were all of American manufacture, the company would be the most natural channel for any one in the country to order them through. Having no fear of competition, Mr. Hopkins was not inclined to push everything at once, and reserved the taking out of the papers, which the President remarked was only a form, until the more important branches of the company's business should be put upon a firm basis." These conversations, reported by E. A. Hopkins to his brother, at the time they occurred, (that Mr. C. E. Hopkins certifies truly no man will question,) accords with the conduct of President Lopez in his treatment of the company, and in his delay in having the deeds of San Antonio drawn for months after the company had possession there. These last statements E. A. Hopkins heard repeatedly from the President himself, as he testifies in this connection. To this statement of the case there is no contradiction in the testimony for the defence; and certainly Paraguay cannot take advantage of the technicality which it waived.

The second answer is, that at the time of the troubles and of our expulsion we yet had the right to apply for the written letters patent; and compliance with such a request was but a form, which the government could not, under its own decrees, rightfully refuse. The law does not limit the time for the application for letters patent. It should allow a reasonable time therefor; and inasmuch as it requires a full description, plan, drawings, models, and everything in relation

to the invention or discovery, it was but right and proper that Mr. Hopkins should be allowed time to set up his machinery, and exhibit it in models or otherwise, before taking out his patents.

Again, the law provides for forfeiture of a patent, in section 4 of article 12: "If, during the period of two years from the date of his patent, he should fail to work the same, except he may justify the cause of his inaction." That two years' "non user" is required to forfeit a patent right, analogous to the provision giving the same effect to the two years' inaction by an inventor in our own system of patent laws. By analogy, two years' delay should seem, therefore, to be the least time which would destroy our right to take out our patents. Before one quarter of that time had expired, the trouble, speedily ending in our expulsion, occurred. We had not then forfeited our right (founded up on the substantive and undisputed fact of being the first to introduce these American implements and machinery) to the exclusive sale and use of them in Paraguay for a term of years, as provided in the decree. These rights were the principal inducements to our enterprise, and the great value they represent are a part of our loss, from this wrongful expulsion. A patent is property as much as a lease of a farm, though the value of each depends upon the income to be derived from it for a term of years.

Value of Patents.

Now, merely to illustrate the value of some of these improvements, take the steam saw-mill and circular saws. Suppose the one set up at San Antonio was weak. It excited the surprise and delight of the Paraguayans, (Ferguson.) Crowds of its citizens and officials came to see its workings. It secured the right to the use of such powers, as the laying of a mud-sill secures the right to the water-fall. New and excellent machinery for the same purpose was in the mouth of the river. At seven hundred feet a day, the work of this weak and cheap mill and engine, the wages of Ferguson and Boyd were \$100 a month. Fuel cost only the cutting, and was equal for furnishing steam—one cord to a ton of anthracite coal, (Lamdin & Page.) Lumber, by price current, 50 to 62½ cents a vara (three feet.) But these items are not needed to show the value of steam saw-mills and circular saws above common hand labor.

We have seen a suggestion that steam saw-mills were of

no value in Paraguay, because Lopez, like the old European governments, claims a monopoly of the forests. Yet lumber must be cut and used, exported and sold: that he leaves to others. We had shown how cheaply this could be done. Could he have forbidden us the use of our machinery, and obliged us to go elsewhere? What would the effect of such conduct be upon his people? Rightfully, he would have sold to us permits to cut lumber on the same terms he sold to others.

So with the cigar factory. The books and Morales show the full cost to be less than four dollars a thousand—price, in Asuncion, ten; average price of first and imperfect lots, in United States, over twelve. Full value of good ones, twenty-five; thirty-five offered after trial, and demand could not be supplied. The factory had at last got into successful operation, making 27,000 a week.

Just as soon as these establishments were successful, we were expelled—the cigar factory taken by Benancio. The steam-saw mill, for want of the valves, he could not use. But the value of all our machinery and implements, in such a country, in American hands, an intelligent judge at once and intuitively knows to be vast, almost beyond calculation. As to the operatives, they were all willing to agree to work, and to commence; but soon got tired, and when their abundant wages (see Hopkins' deposition) came into hand, broke off work. We had to appeal to the law of the country, to compel their performance of their contracts—a right allowed everywhere. Practice and our liberal wages were fast making the trouble which, in part, caused our large initial expenses less, (see close of Hopkins' cross-examination;) and if not overcome, or if our agent had proved injudicious, we could and should have changed, and employed other operatives and agents. We had a large number on the route in the second expedition; and the presumption of law is that we should use our advantages in Paraguay wisely. No wrong-doer can, in self-defence, be allowed to suppose otherwise, or be sustained in such supposition by any judicial tribunal.

The value of our vested rights in all these patents for the use and sale of American machinery and implements, includes, of course, the exclusive right of importation and sale of American agricultural and household implements. Captain Page's book shows us the value of these. Time will not allow us, nor is it necessary in argument, to dwell upon these considerations. But the commissioners, especially the

American commissioner, who has seen the improvements in our agriculture, can and will, in rendering judgment in this case, allow a just sum for the right to import them for sale into the fertile regions of Paraguay.

Rule of Damages.

We cite a few authorities upon the rule of damages. The civil law upon which international law and the law of all civilized countries, (in England and this country, through admiralty and equity,) is founded, recognises the principles for whose application we ask in this case.

The case put in Domat's Civil Law, vol. 1, §750, Cushing ed. §1921 et seq., by way of illustration, is of a person having leased a shop in some town not the place of his usual residence, and then deprived of his possession, the charges for damages in such a case for mere breach of contract, without tort or wrong, are, first, for transportation to the place and back again; second, the loss of *profits*, to be adjusted according to the circumstances in a wise discretion—still the profits. He puts the case also of a breach of contract to deliver certain goods for shipment. The expenses of carriage and transport to receive the goods is a clear element of damages. So the profit to be made from them, to be rationally estimated. He speaks of it as a vulgar distinction between the loss of profits and the loss of property.

Thus we see the civil law would reimburse the party all he had expended in attempting to carry out the enterprise, and also for his profits, not wildly but judiciously estimated by the tribunal; and Domat goes on to say, section 1927, that in case the ejection from the leased premises was intended for the gain of the wrongdoer, so that he might make more from the other parties, "then the damages ought to have the utmost extent that the rigor of the law can give it."

So in section 1970. In the case of a builder who does not build the house he contracted for, he is liable for the expense of rebuilding, for the loss of rent in the meantime, and for any liability in damages from the landlord to a tenant with whom the landlord had contracted—as in our case to our employés. Rutherford, in his Institutes of Natural Law, being lectures on Grotius, says, page 203: "In estimating the damages which any one has sustained where such things as he has a perfect right to are unjustly taken from him or withholden or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits

that might have arisen from it. He who is the owner of the thing, is likewise the owner of such fruits and profits; so that it is as properly a damage to be deprived of them as it is to be deprived of the thing itself." The rules of the Supreme Court of the United States are the same.

In the case of *Bell vs. Cunningham*, (3 Peters, 69,) where an agent had neglected to purchase tiles in Leghorn, to be shipped to Havana, he was held liable not only for the money which the tiles would have cost in Leghorn, but also for the profit which would have been made on them in Havana.

So the case of *P. W. & B. R. R. Co. vs. Howard*, (13 Howard, 307,) when a railroad company had broken its agreement with a contractor, he was allowed to recover for the profits which he would have made if the contract had not been broken. Damages should make him whole of his loss. This case recognizes and sanctions the doctrine of the leading case on the subject in our American law, (*Masterton vs. Mayor of Brooklyn*, 7 Hill, 62,) where a contractor was allowed to recover in damages the profits he would have made on marble not yet bought or worked—the difference between what it would have cost him and what he would have received.

The case of the "*Amiable Nancy*," (3 Wheaton,) the only case referred to by the defendant's counsel, is not a case in which the court lay down the rule of damages against the wrongdoer himself, but against a party who is constructively liable only. We referred to the case, only that this distinction as to the character of parties in the liability for damages might be borne in mind on the trial. This very case, and this only, is cited by defendant's counsel, to show the law in a case against the wrongdoer himself. For such clearly is the case at bar. President Lopez and his government are confessedly the parties defendant, the parties who have done the wrong. The rule, therefore, laid down in the "*Amiable Nancy*" is not applicable to this case, or if it were, has been overruled in the same court.

Now, putting our case down to the mild level of these analogies, regarding the decrees under which we went to Paraguay as offers accepted by us, and then rescinded or practically rendered null and void by the action of the Paraguayan government, what should be the measure of damages? Certainly our cost in taking our men, machinery, and vessels to Paraguay, or cost *bona fide* incurred, though with some disaster and loss in doing so, and in getting back again. So also the value of our position, and especially the value of

lease or patents, which, though difficult to estimate with precision, are certainly larger than our claim.

But this is not a mere case of contract broken, but of wrong proved and conceded in the convention, though denied on trial. And in such cases such liability is admitted in all the books. (See Sedgwick, and cases referred to in opening argument.)

Rights vested under existing laws cannot be divested under any system of government. This first principle is not open to controversy. It will not do to say in substance that Lopez is a despot, knowing no law but his own will. He does not so profess. He does not ask to be so judged. And Americans in that country he cannot treat in that manner without reclamation and vindication by the government of their country. Nor is his claim upon the justice of this commission increased if his method shall be found to be indirect and not direct, through popular annoyance instigated by him, through destitution caused by his will, through decrees founded upon alleged but erroneous suppositions of fact, through summary and *ex post facto* proceedings, imposing impossible conditions, and, when possible, thwarted by his own action, and especially if the motive of his conduct be tainted with personal purposes.

But we will not dwell upon this conduct; we leave all to the judgment of the commission. The largest expedition ever sent from this country has proclaimed our power in the heart of South America. It has proclaimed our justice too. The strength of united England and France is put forth in the eastern world, but our navy seeks the uttermost parts of the earth, also, to open up commerce and a civilization in regions yet comparatively undeveloped. And if wrong is done to American citizens in these new regions of enterprise and commerce, and these wrongs are left unredressed, if they are not made whole for their money expended, for time and labor, and years of life wasted, property destroyed, and reasonable hopes blasted, then the whole paraphernalia of armies and navies is a failure; for they are all, at least, in a republican government, the agents and protectors of private rights and of the welfare of the individual citizens of the Republic.

We are assured that the success which has attended the conduct of this difficult and perplexing precedent in our diplomatic history by the present administration will receive its crowning perfection in securing just compensation and redress to American citizens; and that it will never be left for history

to record, after the distinct admission of the counsel for President Lopez, made after days of minute and laborious examination of books, papers, vouchers, and witnesses, that he has no doubt of their entire correctness as stated by the claimants—that the sums therefore which they have spent, and for which they are liable, for outlays in this Paraguayan enterprise are, with interest, over four hundred thousand dollars. And after it shall appear, as is equally undoubted, that these moneys were spent in good faith, in good judgment, in the prosecution of that enterprise by innocent parties; and when it appears also that every branch of the American government—and every officer who has heard both sides, and investigated the whole matter, have come to the same conclusion, that the company was most wrongfully expelled from Paraguay,—that the President and Congress, and the army, and the navy have been moved by a sense of justice to obtain an acknowledgment of that wrong from Paraguay, and have obtained it—certainly it will not be left to history to say that these enterprising American citizens, endeavoring to open to American commerce and enterprise the great regions of central South America, now, in consequence of their wrongful expulsion, fallen into the hands of other commercial rivals, were turned off by an American commissioner, experienced in all the high duties of American statesmanship, with less than their expenditure. Nor will he tamely count as nothing the personal insult and wrong to which they were subjected, or the thought and time and labor which planned and have carried on the enterprise; and which, again, the counsel of President Lopez has said, was itself well done, except in the employment of Hopkins, as to whom the evidence, and not President Lopez or his counsel, should speak. We have employed no underlings to abuse our opponents or their cause through the public press. We have addressed each tribunal before whom we have appeared, and them only, and with considerations fit to be addressed, so far as we can judge, to the best court in Christendom. The record is right thus far. The past, at least, is secure. The rest is in just hands. An enlightened press, and the history of the country, will record the result; and with it we shall be satisfied.

Expenses.

The expenses to which a party is subjected in vindicating his rights are, in the civil law, and in admiralty, and in the practice of commissions which settle international claims, allowed as part of the damages to be received by him.

The statutes in our common law courts allow, on a similar principle, a uniform and fixed rate of costs, which is more or less adequate according to the circumstances of each case, as compensation for expenses.

The costs of this commission are chargeable as costs of court, like the sums paid to judges and sheriffs and clerks, which the plaintiff always must in the first instance pay, and always receives of the defendant when the latter is cast in the suit. The other expenses, in procuring the attendance of witnesses and for the necessary attendance of parties, comes under the same head, and are allowed in bills of costs. The counsel fees, small in common law bills of costs, and discretionary and just, in proceedings of this character, as well as in the civil law and in admiralty, are allowed in all tribunals.

Domat, §1941: "The ordinance requires a reimbursement of the charges which the parties who gain the said suit have been at in carrying out."

So in the United States Supreme Court in admiralty.

The *Apollon*, 9 Wheaton, 98: "The fifth item, allowing \$500 as counsel fees, is unexceptionable. It is the common course of the admiralty to allow expenses of this nature, either in the shape of damages or as part of the costs."

Many cases in that court follow this rule.

Such is the practice, we are informed, in the Department of State in cases of international claims. Leggett's case illustrates it. Such seems to be the rule in Paraguay. Law of 1845, sec. 7 and 8, as in our patent laws.

Counsel fees, in addition to the bills of costs, are allowed at common law in cases of *tort*, as in cases of flowage of another's lands, (see 2 Story, 661, *Whipple vs. Cumberland Manufacturing Company*;) or, if not in that form specifically, yet under the liberal discretion allowed in all such cases included in the compensatory or exemplary damages by the tribunal assessing them. Sedgwick, 79.

The amount, we may safely say, of counsel fees for three years, with expenses of witnesses and attendance of parties during this six months' trial, will be an addition to the amount already paid and in the accounts, some three thousand dollars—not less than from ten to twelve thousand dollars, which we respectfully claim should be included in the award.

Respectfully submitted by

The United States and Paraguay Navigation Co.,
BY THEIR COUNSEL.

ARGUMENT FOR PARAGUAY:

(JULY 19, 1860,)

BY JAMES M. CARLISLE, Esq.

Whatever may be the result of this case, it must be agreed that every latitude has been cheerfully accorded to the claimants, and that they have had the most abundant opportunity of establishing their pretensions, if it were possible for human ingenuity to do so.

But what, after all, have they accomplished? I do not feel that anything is hazarded in saying that they have signally failed upon every point which was essential to their success.

The amount of their losses, which they attributed to the supposed unjustifiable action of the Paraguayan government, after having grown, from a comparatively humble beginning, to the vast proportions of a castle in the air in the mind of a dreamer, has gradually faded away in the light of truth and reason, until all that remains is a few straw-thatched sheds and huts, a rickety second-hand engine of six horse power, a saw-mill, described by their own millwright as "a miserable affair," an assortment of implements and "notions" of little value, at San Antonio; and at Asuncion, (it is hardly exaggeration to say,) "a beggarly account of empty boxes;" all under mortgage to the friendly government who had advanced to them a sum of ten thousand dollars, which had unfortunately become necessary to their very first step in the grand march in the high road to fabulous riches; and resulting, after the faithful application of the total value of their possession, in a balance of debt to that government of over six thousand dollars. The "violent wrongs" and "wanton outrages," with loud complaints, of which they had inflamed the mind of the American government and people, and of which, upon their *ex parte* representations, they had made a *prima facie* case, authorizing the interference of the government, have proved, one and all, to be acts strictly justifiable, and even due to a decent self-respect in any govern-

ment upon the face of the earth, not prepared to degrade itself before the world, and proclaim its imbecility to its own people.

This may be regarded as strong language; but it is used with deliberation, and is warranted by the unquestionable proof now in the record.

The brief history of the case, as gathered from the archives of the United States State Department, and the documentary and oral proofs exhibited by the record, appears to be substantially as follows:

In the year 1845, Mr. Edward A. Hopkins, who had been formerly an officer in the United States navy, visited Paraguay in the character of an agent of the United States State Department, for the purpose of examining and reporting upon the agricultural and commercial resources of that country, with a view to the possible future establishment of relations with it. He had absolutely no diplomatic, consular, or other international character or functions; but was simply, as a private person, to gather this useful information, and return with it to his government. But the same presumptuous, vainglorious, and meddlesome character which has been attributed to him by the witnesses in this case, and which is abundantly evident in the transactions out of which this enormous claim has sprung, led him to assume upon himself the duties of a public minister, and to attempt to open negotiations with President Lopez for the recognition by the United States of the independence of the Paraguayan republic. President Lopez was far too experienced and sagacious to be deceived by these pretensions. But Mr. Hopkins had the indiscretion to disclose them to the Department which had employed him, and the present distinguished Chief Magistrate of the United States, then presiding over that Department, promptly administered to him a decided rebuke, and his employment ceased. Returning to the United States, he appears, from the deposition of Mr. Arnold, the president of this company, to have devoted himself to the scheme of introducing American capital and enterprise into that country. Mr. Arnold himself, having traveled in countries bordering upon Paraguay, had written some articles in journals or reviews upon the same or a kindred subject. These two appear to have been the founders of the company; and certainly their scheme was well conceived; and if its execution had been entrusted to Mr. Arnold, judging from the impression he has made before this commission, very valuable results would undoubtedly have followed. But it was at least neces-

sary to any success whatever that a little decency and common sense should be employed in the management of such an affair.

The company was chartered by the Legislature of Rhode Island, with the high-sounding title of "The United States and Paraguay Navigation Company." It did not profess to derive any legal capacity, as a corporation, from the Paraguayan government. The stockholders, it is shown, paid in the capital of \$100,000. This amount appears to have been wholly absorbed (with the addition of a balance of debt over and above that sum) in the purchase of an old steamer, to which they gave the new name of "El Paraguay," and her cargo, consisting of the machines and implements before referred to, and a small assortment of ordinary merchandise, which, together with the expenses of transportation, appear, by their own showing, to have amounted to about \$114,000, or an excess of \$14,000 over their whole capital. The steamer Paraguay, charged with her expenses, repairs, &c., at \$90,000, was wrecked, and was abandoned as a total loss. The cargo was damaged. All this occurred before reaching the waters of Paraguay. It seems that, after tedious and no doubt expensive litigation, the sum of about \$35,000 was recovered from the underwriters. But in the meantime the company had met with nothing but disaster. Arrived in Paraguay, they were received (as they themselves have taken great pains to show) with every hospitality and every demonstration of hearty and sincere welcome. It appears, by the testimony of Ferguson and others, that liberty was given by President Lopez for a *reconnaissance* of the country within prescribed limits, for the selection of a site for the erection of a saw-mill, and that this selection having been made at San Antonio, in the immediate neighborhood of the government barrack there, President Lopez ordered the troops to evacuate the barrack, and hospitably tendered to Mr. Hopkins the use of it for the accommodation of the employ  s of the company, while they should be constructing their own quarters. It is stated by Mr. Hopkins, in one of his despatches, that this loan was tendered for the term of two years, but there is no proof of this, nor is it at all probable; but if the fact were so, it would not alter the case. It was a mere gratuitous favor, liable to be withdrawn when it ceased to be merited.

It further appears from the evidence, and from the admission of Mr. Hopkins in one of his despatches, that the loan of \$10,000 before referred to, was generously made to the

company when, as we have seen, their marine disasters had made them greatly need it. At home, in the United States, it became necessary for the company to raise funds by increasing its capital, and accordingly it was increased, and the further sum of \$58,000 was paid in by the stockholders; and to issue bonds for the nominal amount of \$100,000, which were purchased by the stockholders themselves at fifty-seven per cent. below par.

To supply the place of the lost steamer Paraguay, they procured a clipper schooner, the Blodget, at a cost of about \$22,000; and she, in her turn, was wrecked, and proved an almost total loss, without any insurance, and never having entered the waters of Paraguay. She carried out on board of her, in detached pieces, two small steamers, which were afterwards, and after the pretended expulsion of the company, successfully employed for several years at Buenos Ayres; one of them, as Ferguson has testified, having earned, as Hopkins told him, \$50,000 in about ten months. She carried out, also, a small cargo of merchandise, which was damaged, and probably was sold (as the witnesses say) without profit. Neither the saw-mill nor the cigar factory (of which more particular mention will be made) at all augmented the property of the company; but the contrary.

This rapid sketch of the investments and losses of the company, while it occasions a digression from the orderly narrative of events, reproduces at one view all the seed sown, (indicating what of it was lost and what germinated,) from which, as will presently be shown, a harvest of *five millions of dollars* has been seriously and somewhat indignantly claimed as the product of a few months.

Let us return now to Mr. Hopkins, established, by the favor of the government, in the national barrack at San Antonio. With him are Mr. Ferguson the millwright, Mr. Boyd the engineer, and McDonald the farmer, the "second-hand steam engine," "the miserable affair" of a saw-mill, and the other matters and things, which, together with the "*costly improvements*," their witness says, on his cross-examination by the counsel for the Republic, were worth, at "a full estimate," five thousand dollars. By the way, it would probably puzzle him to make out even this comparatively insignificant sum, from the judicial inventory signed by himself as a witness.

The steam engine proves to be defective in certain indispensable pieces. The saw-mill is an ordinary plantation mill, not intended to be worked by steam or water, and a "miserable affair." No attempt is made to work any other

machine—not even the “*machines*” for making butter, commonly called “*patent churns*.” The people of the country are indisposed to labor. It is clearly shown by every witness examined upon this point, that nothing whatever could have been done—not the first step taken—which required labor, but for the purely voluntary favor of the government, in the exercise of what are stigmatized as its despotic and tyrannical powers. A species of conscription was necessary to set the company on its rickety legs. President Lopez ordered the proper officers to select twenty men (ten in each of two neighboring villages) of the race of the *peones*, to be compelled to work for the company at San Antonio, at the stipend of three dollars per month, with a daily ration of a *medio-real*, (six and a quarter cents.)

The necessary clearing was made, and a few sheds erected. Various unsuccessful experiments were made with the saw-mill. The water power proved to be wholly unavailable without the erection of an expensive dam of masonry, never erected. It was a little stream, ten or twelve feet wide, and of “seven inches solid water,” (Ferguson,) or even less than that, as estimated by Captain Morice, R.N., whose deposition is in evidence. But at last the mill is got to work by steam. The *ex parte* deposition of Ferguson, exhibited to the government of the United States by the company, represents him (by the loose and general language used by Mr. Hopkins in drawing it up) as testifying that the mill was now in a condition to cut seven hundred running feet of plank every day; and upon this, extending it for an imaginary term of ten years, even millions of dollars are claimed. But Mr. Ferguson’s note book, with entries made at the time, and which is produced upon the requirement of the counsel for the company, while it states the fact that the mill had cut that quantity after great efforts on his part, adds that *he could not “keep her up”* to that; and that “*in truth she is a miserable affair.*”

But besides a mill, it was necessary to have timber. In these vast conjectures of wealth, what becomes of the element of *timber*?

It is clearly proven by the witnesses produced by the company, that timber is a government monopoly. Not that the government cuts it and trades in the lumber and plank business, but that the raw material—the growing trees fitted for that business—belong to the government, and are a regular source of revenue, there being no taxation upon property as in the United States and elsewhere. This remark (which applies also to other monopolies of the State) may serve to

explain what is said by the company about President Lopez being a "merchant" and a "trader." Now, these visions of wealth in the lumber trade were not supported by any contract, agreement, or understanding, express or implied, for a supply of timber. In this respect, the company stood entirely upon the footing of any other purchaser, as to whom the government might, or might not, be vendor, at prices to be fixed by itself, from time to time, according as it should like the dealings of its customer. In point of fact, the solitary purchase of timber made by the company (testimony of Ferguson) is shown to have been of 1,000 varas of logs ready cut and lying at the government ship-yard, and which were sold by favor merely; and of this supply the judicial inventory shows that by far the greater portion remained unworked when the mill was abandoned.

This, without going into further particulars, faithfully exhibits a general view of the establishment at San Antonio. The agricultural performances there are scarcely worth mentioning. The kitchen garden was the most important of them. The horses and other animals, thirteen in number, were, the best of them, worth six or eight dollars a piece in that country.

There was a store, where the merchandise imported was all sold, and which died a natural death. As there is no claim in this respect, it is not necessary further to allude to it.

The only remaining establishment was the *cigar factory*, set up at the city of Asuncion. Millions of dollars are conjectured as the sure profits of this concern. Let us examine it.

In the first place, during its whole existence, of some ten months' duration, its books, exhibited by the company, show that, all told, it produced only about 500,000 cigars. Putting these down as all safely stored in the United States, and there sold at the price claimed by the company for the selected best quality, (viz: \$30 per mil,) we have a grand total of \$15,000 gross receipts in ten months, from which must be deducted the cost of the tobacco, the support of employes, the cost of manufacture, freight and expenses. A call was made by the American commissioner for an exact account of the disposition and product of these 500,000 cigars, and an argumentative account has been produced; and with considerable circumlocution the fact is finally disclosed that the sales of cigars in the United States amounted to \$1,895.71, and in South America to \$1,486.80; total, \$3,382.51, gross receipts.

Here, then, we have the practical results.

And how were these results attained?

First. The sum of twenty-five hundred dollars and seventy-five cents was paid for the building where the factory was established. This is their own evidence of the value of *this* "costly building."

Second. The operators, principally women, the ordinary cigar makers of the country, were, like the *peones* at San Antonio, *conscripts*, whom the *mere* favor of the government towards the company compelled to work for it. They would only have worked for a few days, and never have been available for the company's boasted improvements in cigar making but for this voluntary favor of the government. This is clearly proven by the company's witnesses; and *it was necessary to prove this*, in order to establish the charge of breaking up the cigar factory, viz: by *withdrawing the favor of the government*.

Without a more wearisome and unnecessary detail, this is the general condition of the cigar factory.

It is evident that the whole concern, in both branches, was absolutely dependent for any success whatever upon the active aid and favor of the government; and the whole claim—whether great or little—depends entirely upon the question, whether the withdrawal of these favors can be the foundation of a demand for damages.

Upon this question it would seem very plain, upon ordinary reason, that no responsibility can arise in such a case. Favor, *ex vi termini*, is not matter of right. He who seeks favor submits himself to the will, and does not pretend a title. He must merit the favor.

But, if it were otherwise, let us look at the circumstances under which President Lopez withdrew these favors. For it will be seen, from the whole case, that this is the extent of the injury he has inflicted.

First. The expectations which the company had created by the title which they assumed and by the flourishes of their agent, Mr. Hopkins, not only were not in any degree realized, but there was apparently no prospect of their being realized, judging by the results of eight or nine months' operations. This, however, did not produce any change in the conduct of the government, although it might well have done so, since the theory of the claim itself is that great benefits were conferred by the company upon the government and people of Paraguay, as the consideration of the privileges to which it pretends. But,

Secondly, the arrogant and presumptuous conduct, and the bad faith, of Mr. Hopkins, who claimed to be the embod-

iment of the company, were the sufficient and only causes of the proceedings complained of.

The testimony of Lieutenant Powell and of Mr. Ferguson, both of them witnesses examined by the company, describe Mr. Hopkins as follows:

Lieutenant Powell (page 91) says: "Mr. Hopkins was well known in the navy as an egotistical and presuming man, and one who had constantly embroiled himself in all kinds of difficulty while in it." And, at page 116, he says he did not consider the conduct of Mr. Hopkins, as agent, "judicious."

Mr. Ferguson (pages 166-7) says: "I think his conduct was scandalous, according to my ideas of morality, and shocked even the people of the country." And, at page 176, he says, (as an example of his deportment in other respects,) "One afternoon, when riding with Mr. Hopkins from San Antonio to Asuncion, not far from the Gran Plaza of the latter place, we met a man on horseback, dressed in the usual citizen's costume of the country, who passed us. Mr. Hopkins turned round and rode back after him, and, on coming up with him, administered several severe cuts with his horse-whip. Witness had perceived no cause in the man's conduct for this assault." And, (at page 117,) being asked whether his treatment and intercourse with the people and officials of the country were respectful and conciliatory, he answers: "Quite the reverse; it was overbearing and tyrannical. He had a swaggering, bullying way with him in all his relations of life, and his deportment was always overbearing and tyrannical." And he then relates the incident, reported by Hopkins himself, of his having entered the President's audience chamber in an excited manner, wearing his ordinary riding dress, with whip in hand — a gross offence against the usages of that country.

From Captain Page's despatches to the Secretary of the Navy, (in evidence here,) it is apparent that he viewed Mr. Hopkins in the same light. He himself (Hopkins) in his despatch to Mr. Marcy of August 25, 1854, proclaims the verdict of the naval officers upon his conduct, in the following significant sentence:

"In the midst of these affairs and publications, the five or six officers of the navy who are now here continue to cut my house and presence, thereby causing infinite moral aid and comfort to President Lopez," &c.

But to come to particulars. Mr. Hopkins, the guest of the government at the cuartel of San Antonio, sets himself to work in the most discreditable manner, (to characterize it

by no stronger language,) to attempt to acquire a title to the property which he was thus occupying by favor. The judicial proceedings in evidence show that the tract which he claimed to include the cuartel, was the property of certain infants, whose mother, the widow Bedoya, was their guardian; that he fraudulently procured their title to be conveyed by her to him, without the prescribed "*inquiry of utility*," as it is called—a proceeding analogous to the laws prevailing in most of the States of the Union in respect of the sale of the property of infants; and without the special license necessary for an alien to hold lands—as the company themselves have shown was necessary, by producing such a license for the purchase of the cigar factory.) Having armed himself with this pretended title, (the general law of Paraguay prohibiting the holding of lands by an alien without special license,) the testimony of Mr. Ferguson shows that there was no official survey, (which is also required,) and no act of judicial possession; but that he, (Hopkins,) arbitrarily assuming a certain beginning point, directed Ferguson to run, with a mariner's compass, a line by a certain course to the stream, by which line (the only one run) he located his pretensions so as to include the cuartel. From the opposite side of the cuartel he erected a fence, so as to enclose it, and at the same time to enclose an old public road, which was the only one leading from the great highway to the port of San Antonio; a measure which, as the testimony of Ferguson shows, was complained of by the people and officers of the port, as inflicting a public inconvenience; but to which they submitted, not bringing it to the notice of the government at that time. After this act, if it stood alone, how is it possible for any dispassionate mind to consider Mr. Hopkins, or the company for whom he was acting, as entitled to any favor from the government, or to any privilege or advantage to which he or they could allege no strict right? But this is not all; nor does it appear to have attracted the notice of the government at the time. Mr. Hopkins proceeded in his career of arrogance and presumption in all his intercourse with the people of the country, until an incident occurred which brought it to a point beyond endurance, in direct offence and insult to the Supreme Government itself. This was the affair between Mr. Clement Hopkins, the brother of Mr. Edward A. Hopkins, and the soldier Silvero. This is stated by some of the witnesses to have been the "beginning of the troubles;" and it is certain that in Mr. Hopkins's voluminous despatches as consul. no complaint or any intimation of any unfriendly

conduct by the government or people is to be found until this occurrence.

The account given of it in the affidavit of Mr. Clement Hopkins is highly improbable. It is substantially, that riding along the road with a Madame Guillemot, (in respect of whom reference is made to the testimony of Ferguson, at pp. 166, 167 of the record,) they perceived ahead of them a drove of cattle, in charge of a cavalry soldier. That they rode into a side path, making way for the cattle; and that the soldier, without the slightest provocation, came up to him from behind, and struck him across the shoulders with the flat of his sabre, leaving "a mark which was visible the next day."

This account seems incredible, but for the aid of Mr. Morales, the Cuban, who boldly declares, upon oath, (as the only explanation which has occurred to him,) that he has no doubt that President Lopez, who knows everything, and without whom nothing is done in Paraguay, foresaw that this soldier, with his drove of cattle, twelve miles from the capital, would meet Don Clemente riding with the French lady on that day; and had given him orders to whack Don Clemente with the flat of his sabre, in order to produce the correspondence with the consul, Don Eduardo, which subsequently followed, and which, by this adroit and wonderful movement of President Lopez, afforded a pretext for him to embarrass and finally get rid of a company whose immense operations (the extent of which we have seen) had alarmed him, and aroused his envy and hatred. It may be said in passing, as the only notice which it is thought necessary to take of this witness's testimony, that if he really believes in such witchcraft, he might possibly be highly valued if the knight of La Mancha were sitting in judgment upon this case; and if his good sense was only temporarily obscured by passion or interest, when he avowed that extraordinary belief, he has given us a warning, not to be disregarded, that this testimony is to be received with many grains of charitable allowance.

On the other hand, the testimony of Ferguson shows that, within an hour or two after the event, Mr. Clement E. Hopkins and the French lady, in giving their account of it, said that they rode in among the cattle, and that the blow was given under these essentially different circumstances. The official investigation established the fact to be that the soldier, perceiving their approach at a gallop, made signs to them, and called to them to stop; that they rode on and into the drove, frightening and dispersing the cattle; and that, under the irritation of the moment, he struck the blow. Nev-

ertheless the soldier was punished with three hundred lashes, the judgment being that, notwithstanding the provocation he had received, it was his duty to refrain from violence, and to report the facts to his superior.

It is shown that Mr. Consul Hopkins was greatly excited upon being informed of this insult to his brother, called for his horse and his pistols, and went in pursuit. But the important fact is, that in making his complaint to the Paraguayan Secretary of State, he took occasion to write in a grossly and wantonly offensive manner. Let the correspondence, which is in evidence, be read; and let it be doubted, if it can be, that if any Paraguayan consul, or any consul or minister plenipotentiary of any nation under the sun, had addressed the government of the United States in a similar manner, the common and unanimous sentiment of the country would have required the instant termination of all official relation with him.

This was the "*beginning of the troubles*," say the witnesses. Mr. Consul Hopkins himself, in his despatch to Mr. Marcy, dated August 30, 1854, referring to this matter, says: "His (President Lopez's) difficulties began with me as consul, when I performed an official act, in the manner and for the reasons already stated to you."

This occurrence took place the 22d July, 1854. The correspondence between Mr. Hopkins and Secretary Falcon was continued until, on the 1st of September following, the *exequatur* of Mr. Hopkins was withdrawn. In the mean time, on the 9th of August, Mr. Falcon had addressed to Mr. Marcy a despatch reporting to him the whole matter, and the punishment of the soldier, and at the same time remarking firmly, but with moderation, upon the conduct of Mr. Hopkins in this correspondence; and again, on the 23d of August, informing him of the further progress of the correspondence. On the 2d September he addressed to Mr. Marcy another despatch upon the same subject, and communicated the withdrawal of the *exequatur*. All these despatches are so many proofs of the candor and good faith of the Paraguayan government, and so many tacit negations of the unfriendly and injurious spirit in respect of Americans generally which Mr. Hopkins, and this company relying upon him, have imputed to it.

Under date of December 22, 1854, Mr. Marcy acknowledges the despatch of September 2, and expresses the President's regret at Mr. Hopkins' conduct. In fact, he was removed from his office, and a successor appointed, but

whether on account of this transaction or for other sufficient reasons, does not appear in the case.

And now let us see what acts affecting the company were done by the government of Paraguay, and let us observe whether they were anything more than the withdrawal of favors which were plainly forfeited. They are simply as follows, viz :

The order of the government which had compelled the laborers (against their will, as the testimony for the claimants proves) to work for the San Antonio concern, and for the cigar factory, respectively, was withdrawn. The friendly hand which had supported both establishments was indignantly and justly withdrawn, and they fell to the ground.

The fraudulent attempt to acquire the property which had been generously and hospitably loaned to Mr. Hopkins for the temporary accommodation of the company, was defeated by due and regular judicial proceedings, in conformity to the laws and institutions of the country, declaring the title so acquired to be null and void. Even this was not done until an offer had been made (which appears in the *expediente*) to avoid this necessity, by purchasing from the company this pretended title, at double its cost to the company. In the decree provision was made for the return of the purchase money (seventy-five dollars) to the vender.

The government (and what government would have done otherwise?) then requested Mr. Hopkins to evacuate and surrender the barrack in a reasonable time, and ordered the troops to reoccupy it on such surrender. Mr. Hopkins refused in the haughtiest manner, and replied, among other things, that he had "given the necessary orders to the Americans residing there not to surrender the land, nor the protection of the property, except to force." But no force was used, nor was any necessary. Mr. Hopkins refused to remove the property and effects of the company, and elected to throw them upon the hands of Paraguay, as the subject of "reclamation." The government then directed a judicial inventory to be taken of them, at which Mr. Hopkins was represented by Mr. Ferguson and Mr. Boyd, duly authorized by him. This inventory is in the record, and is, moreover, verified by the testimony of Ferguson before this commission. It is singularly minute, descending scrupulously to the most insignificant details. The pretence that the judge wanted to make Ferguson and Boyd sign in the wrong place, and attempted to procure a fraudulent and incomplete inventory, turns out,

upon the explanation of Mr. Ferguson, as well as from the official documents, to be all a mistake. The proceeding was by the instructions restricted to the taking possession of the cuartel and its appurtenances. The inventory was to be limited to the property there situate, and which Hopkins refused to remove. With what remained outside, and with the land where the saw-mill and "machinery" was situate, the government had nothing to do; hence the refusal to include it. But finally, in one form or other, the whole was inventoried, and the whole has been carried to the credit of the company, under the proceedings to foreclose the mortgage before mentioned.

The government, for reasons of policy of which it alone could judge, and which were founded in the nature of its own institutions and the character of its own people, forbade the use of the "foreign commercial title" which Mr. Hopkins used. The terms of the decree extend to all such titles; but no doubt it was intended to apply specifically to him as the immediate and provoking cause of the rule. In the same decree, in the next preceding article, (articles 13 and 14,) the pre-existing general law, applicable to natives of the country as well as to foreigners, requiring a license to be taken for every industrial or commercial factory, at the cost of eight dollars each for the stamp, was directed to be enforced, in all cases, within the term of three days. The affected prompt submission of Mr. Hopkins to this requirement is sufficient evidence that such *was* the general law, and that he had not theretofore complied with it. In most of the cities of the United States, and in this capital of the Union, certainly, a license has to be taken and a larger sum than eight dollars paid *annually* for every commercial establishment. It doubtless often happens that, in exceptional instances, the law is not rigidly enforced, for want of vigilance in the officers, or other causes, and that special attention is called to it. But let it be conceded, *argumenti gratia*, that the *particular and only case* intended to be reached was that of this company represented by Mr. Hopkins. What then? If the law was so, (which is not denied;) if the company had not complied with the law, (which is not denied, but the contrary admitted by Mr. Hopkins hastening to apply for the licenses, as proven by Morales, and by the original application itself,) what possible ground of complaint can this 13th article of the decree afford? Was it not competent for President Lopez to require the pre-existing law to be complied with? What more did he?

But the article 14 aroused Mr. Hopkins to a prompt display of his qualities. He undoubtedly understood it as forbidding the use by him of his "*foreign commercial title*," without the formal permission of the government. This is evident from his hastening (testimony of Morales) to act upon the decree before it had been notified to him, and addressing to the government formal *notice* that he was "General agent of the United States and Paraguay Navigation Company." The *knowledge* of this fact had, from the beginning, been in the possession of the government, as the correspondence, and other papers put in evidence by the company, clearly show. The counsel has taken pains to prove that there was then in the hands of Hopkins superabundant evidence of the *actual and formal knowledge* of the government in this respect. Why, then, hasten to address a communication to it, limited to the announcement of this fact? It was an insolent mockery, unless it was intended as *submitting the fact* for the formal "*conocimiento*" of the government, in view of the 14th article of the decree, which related exclusively to the *future use* of this title in the Republic.

That Mr. Hopkins understood the words "*conocimiento formal*," the government could not doubt; nor can any man who knows he wrote and spoke the Spanish fluently; or, who will consider the mere fact of his addressing this formal notice to the government. The dictionary of the Spanish Academy (and, I believe, every other standard dictionary of the language) gives, amongst others, this definition of the word "*conocimiento*:" "*El acto de entender en alguna causa, y juzgar de ella*;" literally, "*the act of understanding any cause and judging of it*;" in other words, taking jurisdiction of, and determining the matter; which matter was, the privilege of using, for the future, the "*foreign commercial title*."

A word more, in parenthesis, of this article of the decree. In the United States the character of the people, and the nature of our political institutions, make it of small consequence practically, what title a man may use as the head or tail of his name, or in place of his name. Nevertheless, the *prohibition of titles*, of a certain sort, finds a place in the organic law of the land, pervading not only the federal institutions, but controlling every State of the Confederacy. In this respect enlightened rulers must determine for themselves, according to the condition of the States they govern, what is expedient. In some places (as in Hayti) the title of Duke of Lemonade, Marquis of Marmalade, or even Baron of Pumpkin Pie, might be serviceable to the preservation of public

order. In other places, and on other occasions, the title of Governor (as in the case of Mr. Arnold, the president of the company) might possibly be supposed to have value. In other instances, and in different latitudes, the use of a particular title, or of any title, might be productive of public inconvenience or injury. There are things which are essentially municipal (as distinguished from international) in their nature. No nation has any decent pretext for interfering with any other nation in this respect. They really, after all, may be properly compared to the class of *police regulations*, which, under our own system in the United States, are conceded to belong to every one of the confederated States respectively, notwithstanding the common bond and supreme obligation of the Federal Union; so completely are they distinguishable from matters of international concern.

But in what possible manner or degree could it affect the company that Mr. Hopkins should use publicly, or not use, the high-sounding title of "*General Agent of the United States and Paraguay Navigation Company?*" It was understood to have been orally suggested by the counsel for the company (and the suggestion was only calculated to produce a smile) that President Lopez desired to get everything belonging to the company into the individual name of Mr. Hopkins, in order then to deal with it arbitrarily, and without responsibility to the government of the United States. This idea is worthy of Mr. Morales. But how could this be? First, the counsel has shown (and the Paraguayan government has never pretended to the contrary, but in all the despatches constantly admitted it) that all these interests, great or little, belonged to this company, and that Hopkins was only their agent, except so far as his contract with them made him, as it did, substantially one of the company. How then could the refusal to allow Mr. Hopkins to vapor with this title affect the interest of the company? All evidence shows that to get rid of him would have been a perfect god-send to the company; and the testimony of Lieutenant Powell, and the despatches of Captain Page, show clearly that President Lopez expressly offered and declared, that if any other person than Mr. Hopkins (who had then made himself intolerable) should be allowed to take charge of the interests of the company, all difficulty would be removed. But this, which would have been a perfect extinguisher upon Mr. Hopkins, did not suit him; and he refused, thereby preferring his own vainglory to the interests of his principals.

Again: how would the arbitrary and unlawful destruction

of these interests, *in the name of Mr. Hopkins*, be safer than *in the hands of the company*? He was the head and front of the company there. An American citizen, consul of his country, this case would have been at least as strong as the other.

But this pretence is hypocritical as well as absurd. It is perfectly clear, upon the testimony of Lieutenant Powell, given here as a witness for the claimants, and it is perfectly clear upon the official correspondence of the State Department, that there was no hostility whatever to the company or its enterprise. This is the judgment of Mr. Marcy, who, in his letter to Messrs. Arnold and Gallup, (committee of the company,) dated March 7, 1855, says: "*It is evident, from the tenor of the whole correspondence, that the government of Paraguay confined its opposition entirely to Mr. Hopkins individually.*" (This is the language of the Spanish translation, re-translated. I have not the original English before me.)

Lieutenant Powell distinctly states that President Lopez declared to him that his objection was entirely personal to Mr. Hopkins; and that if the interests of the company should be transferred to any other hands, every privilege and advantage should be guaranteed to it which any foreigner could enjoy.

Commander Page, in a despatch to the Secretary of the Navy, dated Asuncion, September 26, 1854, uses the following language, to the same effect:

"Mr. Hopkins declined allowing any one of the persons under him to carry on these works, and came to the conclusion that the course for him to pursue was to throw the responsibility on this government, and look to a reclamation being made by the government at home. * * The opposition of the government was confined to himself and a Mr. Morales, who had made himself odious to the government by some very impudent and ridiculous remarks. * * * Acting Lieutenant Powell used his best endeavors, both for the interest of this company and to avoid collision with the government. He desired to know from Mr. Hopkins if he would allow another to act in his stead, stating that to this the government had no objection. He declined doing so. * * * I called on the President on my arrival. He expressed himself as having been outraged by the remarks, the communications, and conduct of Mr. Hopkins and Mr. Morales, and said that matters had gone to such a length that he would not now permit Mr. Hopkins to do any more business here. I requested to be informed if other Americans belonging to the company would not be allowed to do business. He said that any Americans would be allowed to do business with the same privileges that were accorded to other foreigners, and that his objections were confined to Mr. Hopkins and Mr. Morales. I stated to him that some of the persons of this company had said they did not feel themselves protected, and desired to know if they would not receive every protection from insult and injury. He said they should.

"The day following I saw Mr. Hopkins on board this vessel, having sent him word to meet me at a certain hour, for I had expected to have seen him the day before. He explained the circumstances involved in this difficulty, stating to me that he had thrown all the work they had in hand on the responsibility of this government, having been compelled to do so, because of its action towards him, and that he required or demanded of me to join him

in a protest to this government for the outrages that had been committed. His tone and manner were in his usual style of presumption, and I promptly informed him that his requisition and demand would not be granted. I assumed this, in my humble judgment, as the proper course for me to pursue, because I could see no good resulting from such an empty boast, Mr. Hopkins having taken such steps before my arrival as to preclude any action on my part towards a continuation of the operations of the company. I stated to him the nature of my interviews with the President, and at the same time assured him that if he or any American citizen residing on shore considered himself unprotected from insult or injury, he or they would find protection on board of the *Water Witch*. He said he desired to leave the country, with those who were attached to the company, and to take with him such effects and merchandise as he had in store and in his dwelling house; but that he apprehended no merchant captain would consent to receive him on board, lest he should incur the displeasure of the government. I informed him that I would see the President on the subject, and if I could not procure him a passage with his effects, I would take himself, company, and effects on board the *Water Witch* to Corrientes, where he desired to go.

"I called to see the President—singular as it may appear, nothing is done in this country without his knowledge and assent—and learned from him that he was willing and desirous that Mr. Hopkins should leave the country, and said that he would instruct the captain of the port to procure a vessel. No captain of a vessel would decline taking Mr. Hopkins on board, with his company and merchandise, if requested to do so by the captain of the port, because he would be assured that by so doing he would be acting in accordance with the wishes of the President. * * * This Mr. Hopkins is aware of; and, for the interest of the company, he should have withdrawn himself actively from its operations, and have made a trial, at least, of the sincerity of the government in its professions of friendly disposition towards the company. * * *

"I should have mentioned in another part of this letter that I ascertained from the President there was no intention on the part of the government to prevent Mr. Hopkins taking out of the country any of his effects, merchandise, or property, notwithstanding the indebtedness of the company to the amount of \$10,000, for the payment of which he would not hold the property.

"At the time Mr. Hopkins was ordered to leave the cuartel at San Antonio, he was requested to move all the property. He removed some of the articles, declining to remove others. They were removed by the government, an inventory having been taken and an appraisal made. These articles, a list of which, together with the proceedings, will be found in the papers sent, were stored in the city, they having been thrown on the hands of the government by Mr. Hopkins, and will be sold, the money given to Mr. Hopkins, if he will receive it, and, if not, will be put into the treasury for the benefit of his creditors, or for the company.

"The operations of the cigar factory were stopped because Mr. Hopkins would not take out a license, in accordance with a decree of the government. These are arbitrary acts, and show the power of this government, but still, it is its mode of proclaiming the laws, and all have to abide by them."

These quotations from Commander Page's despatch apply also to other portions of this case; but they are now cited to show that it was perfectly understood by Mr. Hopkins that the difficulty about this "foreign commercial title," and all the other difficulties, were entirely personal to himself; and that it is a mere shallow and insincere pretence which is now put forth, that the object of the decree was to take the enterprise out of the name of the company (against whom there

was no hostility) into the name of Hopkins, for the purpose of wantonly injuring his unoffending principals.

Mr. Hopkins having thus hastened to fling himself in the face of the government of Paraguay, with his title of general agent of a company assuming to itself the name of Paraguay as well as of the United States, did not wait to receive an answer which should advise him of the determination of the government, which of course he anticipated. He forthwith applied for the license required by law (as his application admits, and as has not been denied here) for the San Antonio saw-mill and the American cigar factory, signing his application with the prohibited title. Of course his application was returned to him; for to have entertained it would have been to admit his entire immunity from the law which governed all others in the country.

Again: the legal license (\$8 cost) not having been taken for the cigar factory, situate in the capital itself, and the term of three days being past, as a matter of course the decree was executed. The factory was closed *because the license was not taken*; and this was but the fulfillment of the law.

It is proven that Mr. Hopkins was distinctly informed that the application was only rejected because he had availed himself of the occasion to brave the supreme authority of the country, by using the "foreign commercial title."

Let this thing be viewed in any aspect, by a Paraguayan or an American—can there be any doubt in the mind of any man of common sense upon it? If the objection of the Paraguayan government to the use of this title, under the circumstances of its internal policy, be not appreciated by an American, can he deny that this question of policy was to be decided by that government alone? Can he suggest a reason, not founded in Mr. Hopkins's vain, egotistical, and presumptuous character, why *he* should have claimed exemption from the law? Can he suggest a possible injury resulting to the company from a submission to it? And let me here say, once for all, that while I think the acts of the Paraguayan government strictly justifiable upon principles of public law and natural justice, I do not comprehend the *idæ* upon which it is asserted that American citizens are to go into a country which they say they know to be arbitrary and despotic in its government, and claim to gather in its riches in total exemption from the operation of its political institutions. To me this seems a perfect absurdity.

These are all the specific acts of the government of Paraguay towards this company which have been complained of

Vague and general complaints and declarations about "insults" and unfriendly treatment have been made. Mrs. Hines, the wife of the "cashier," says the country girls pulled at her long (and to them strange) riding habit. The common people gathered around their windows, and showed, no doubt, something of the same inconvenient curiosity which was exhibited by the people of the United States towards their recent Japanese visitors. No doubt if Mr. Hopkins (as is probable) met these innocent intrusions in a "*blustering, swaggering, overbearing and tyrannical*" way, there may have been occasional retaliation by throwing orange peels, and such like, into his windows. If Mr. Morales *performed* there in the spirit which he has exhibited here, no doubt he got some impudence (and he deserved it) in return. The people of that country are satisfied with the paternal government which they enjoy; and they have no fancy for Mr. Hopkins, Mr. Morales, or the six banished filibusters whose depositions, out of all the vast populations bordering upon Paraguay, could alone be brought here to traduce and slander the character of President Lopez. Long after the gross provocation given by Mr. Hopkins, and within a few days of the termination of the whole affair, (to wit: on the 25th of August, 1854,) he [Hopkins] uses this language in his despatch to the Secretary of State of the United States. Speaking of President Lopez, he says: "Those around him, seeing that *his published appeals to the mob to insult us have not yet had the desired effect*, are pushing him to any length which may have at any moment the desired effect."

Mr. Ferguson (whose conduct, appearance, and testimony before this commission are in marked contrast to Hopkins' and Morales') says, at page 148: "*I was treated with the greatest respect, as far as the people of the country were concerned. I never had any difficulty with anybody all the time I was there.*" And he was there during the whole affair, and left with Hopkins in the Water Witch.

It has been pretended that the agent and *employés* of the company were expelled from the country; and again, with characteristic consistency, that they were refused their passports; and Morales says, that after he had got his passport, and safely reached foreign parts, the Paraguayan consul tried to coax him to go back, in order that President Lopez, with his omniscient and omnipotent faculties, might get him bodily in his grasp, to punish him.

These false and ridiculous allegations answer one another. The despatch of Captain Page, already quoted, the testimony

of Lieutenant Powell, that of Ferguson, and indeed all the testimony relating to this part of the case, plainly prove that there was neither expulsion, nor refusal of passports, nor desire of personal vengeance upon the formidable Morales.

It has been pretended by Mr. Hopkins, that he was required to surrender the title papers to the lots of real estate which he had purchased, and that this was made a condition to the granting of the passports.

This is without foundation. Never at any time did the government claim to interfere with any other land than that which was appurtenant to the national barrack. This barrack, at an important point, had been established there in the belief that the spot, which was vacant and wild, was of the ungranted public domain. This being ascertained to be a mistake, and the land being claimed by Zelada, the government purchased his title. Upon the survey, it was found that the 2½ cuerdas were enclosed by Hopkins, under a pretended title, derived as has been already stated. It was to the annulling of this title, surreptitiously and fraudulently obtained by Hopkins, that the government limited itself. The *surrender of the papers* was wholly unimportant. Before proceeding to the decree of nullity, the government, in the exercise of the unquestionably just right to take private property for public use, making just compensation, suspended these proceedings, and for the sake of peace offered to purchase this voidable title for a large advance upon the price paid by Hopkins; even double the amount paid by him.

As to the other real property at San Antonio, purchased by him for \$162, and on which his mills, engine, machines, &c., stood, under a shed, it was of no importance to government, and was not interfered with until Mr. Hopkins himself insisted that the inventory should exclude the whole, and that he abandoned the whole to the government.

The decree requiring him, as all others similarly situated, who had omitted the official survey and fixing of boundaries, to attend to that proceeding within a fixed term, necessarily required that the title papers in all such cases should be *exhibited* in order that the true boundaries might be ascertained and fixed. But this was its only, and its express purpose.

Upon this review of all the important facts in the evidence, it is confidently submitted that there is no responsibility whatever upon the Paraguayan government, in the whole premises.

But it is maintained by the counsel for the claimants that the question of responsibility is not now open; that it is to

be taken for granted that there is a responsibility, because, it is alleged, the government of the United States has, in both the executive and legislative branches, decided this question. This ground will not surprise any person who has had the opportunity of examining the documents in this case prepared on the part of the claimants. It is plainly to be seen that, from the beginning, they have sought to evade any inquiry into this fundamental point. In the "confidential" letter signed by their committee, Messrs. Arnold, Waterman & Baily, dated New York, October 15, 1858, and addressed to Mr. Bowlin, on the eve of his departure for Paraguay, they say, referring to another paper which they placed in his hands:

"We have ventured also to call your attention to the serious objections *to any commission, especially to examine into any matter of which our government is already satisfied.*"

No doubt. There were, and are, serious objections, on the part of the company, to such an inquiry. But if the government of the United States, listening in a patriotic spirit, was not imposed upon when it was "satisfied" (if it was satisfied) that outrages had been perpetrated, what serious objection can the impartial inquirer after truth find to a full and deliberate examination of this primary question? A commission *was* agreed upon, notwithstanding these "serious objections." It is a commission under a treaty and the law of nations, and is composed of one commissioner on the part of each nation. These commissioners are sworn, in the words of the treaty, *to investigate this claim*, as well as to adjust it, and determine its amount, "upon sufficient proof of *the charges and defences of the contending parties.*" (Article II.) Without repeating further what is said in the opening paper on this subject, or extending the argument, I content myself with the plain words of the convention and the nature of the subject-matter itself, as justifying the assertion that this question of wrong or no wrong is an open question. But if it were not, as has been aptly remarked by the United States commissioner, on the former argument, practically, the result must be the same; since, if it finally appears that no wrong has been done, the damages must be merely nominal.

Assuming, then, for the sake of the argument, that this liability is fixed, what is the damage? First, as to all real, existing, tangible property left in the country of Paraguay by the agent of the company, it clearly appears from the evidence that it was faithfully preserved; liberally appraised, sold at public auction, and the proceeds applied to an ac-

known debt due by the company to the Republic, (\$10,000 loaned money, and interest,) and that the balance remaining due to the Republic is upwards of \$6,000. The precise sum appears in the evidence.

Against this real and tangible part of the case not one syllable of evidence is adduced by the company. On the contrary, the evidence from Mr. Ferguson, one of their own witnesses, confirms it, in a general way.

What remains? The rest is *in nubibus*. It is made up of extravagant conjectures, running through an imagined succession of prosperous years.

All these calculations are founded upon the assumption that the company had become entitled to certain exclusive rights and monopolies of saw-mills, cigar factories, brick-machines, plows, hoes, shovels, pick-axes, churns, and what not. But the company itself has expressly founded its pretended rights in these respects upon the decree of 1845 and the letter of Mr. Gelly, which they have given in evidence.

Now, it is too clear for controversy, that they did not comply with any of the terms and conditions of that decree. It does not differ essentially from ordinary patent laws in other countries. Its provisions are reciprocal between the government and the private party. It cannot be sensibly construed so as to confer any monopoly or privilege or patent without the regular official evidence of it being applied for and issued upon the express terms and conditions of the decree itself. It is not even pretended that these, or any of them, were complied with. The printed argument for the claimants (a copy of which has been furnished to me late this afternoon) admits this distinctly at page 22—excuses it by the supposed fact that the agent was “constantly occupied in business,” and “thought it unnecessary to press those parts of it which would not suffer by delay.” It proceeds to say: “We have still a right, however, to apply for them, (the patents,) and abundant proof with which to support the application.”

A bright idea, indeed! But, meantime, until it is executed, there are, and have been, no patents or exclusive rights.

But if this supposed right of now applying for the patents could be exercised here, before this commission, I beg to submit to his honor the United States commissioner, with that decree and these proofs before him, whether he would feel authorized to issue one single patent of all those which are assumed to belong to the company? I should have not the slightest doubt of his judgment in such a matter.

It is very nearly seven years since these wonderful advantages were introduced into Paraguay; but there is not one particle of proof that any single machine or improvement claimed by the company had been put in practical use there. If any witness has testified to it, or any official document certifies it, it has escaped my most careful attention.

If these mysterious improvements in the making of cigars were really worth anything, and were new, was it not the express consideration of any monopoly for a term of years that there should be a precise and formal description of the processes deposited in the public archives, before the exclusive right could accrue, so that the government and people might eventually have the benefit of the secret? The decree in evidence distinctly provides it. But Mr. Morales, the director, Mr. Font, and Mr. Orihuela, the practical men, who were possessed of these valuable processes, are before the commission—the first personally, and the two others by their cross-examinations in Paraguay, here produced; and it hardly seems necessary to waste time upon either of the trio or their joint treasury of knowledge.

So of the saw-mill. "Miserable affair," as Mr. Ferguson says it was, could it give a claim to the privileges of the decree, by being merely put up and used—one single machine, by the company, for its own profit—without any model being deposited, or any provision made for the corresponding advantages to the Republic which was to grant the monopoly? The whole theory of this part of the claim seems to me preposterous.

But from the beginning, and even in the opening statement here, it has been claimed that a dispensation had been granted by a certain imaginary Secretary of State of Paraguay, Mr. Gelly; and his letter has been given in evidence. It turns out, in the first place, that he never was Secretary of State. But if he had been, the plain language of the letter is to refer Mr. Hopkins, by express citation, to this very decree of 1845—not at all to dispense with its provisions; and if had professed to alter the law, it would have been simply nugatory.

With "*the invitations of Paraguay*," the "*inducements held out for American enterprise and American capital*," so often and so boldly referred to throughout the progress of this claim, it might have been expected that some evidence of the truth of this staple of the matter would have been produced, other than a general law, with none of those terms or conditions had the company complied. The case, fortunately, has now reached a point where florid rhetoric and confident assertions will pass for nothing, if the solid foundation of useful

facts be wanting. Where are those facts? Upon what ground of fact or of law can these conjectural profits be claimed? The facts have been reviewed; let us look for a moment at the law.

And, first, it may be remarked, that the abstract doctrine of law is of no practical importance, if there be no facts to which it may be applied; and that is precisely this case, upon the question of the measure of damages. The fundamental fact of a vested right from which profits were expected, is wholly wanting. The other element of a violation of such right (if right there were) is not established.

The principles and cases cited in the opening argument are not at all controverted; but it would be a waste of time, after what has been said in this paper, to go into any examination of them, as to their application to this case. They are familiar to every lawyer. But it is believed that their application to a case like this is sufficiently novel to support a claim to the exclusive use of them in like cases.

The case of the *Amiable Nancy*, cited from Wheaton, seems a peculiarly unfortunate selection. There the Supreme Court cut down the decree of the court below, from about \$3,000 to about \$700. One of the items claimed was for the loss of the supposed profits of the voyage upon which the *Amiable Nancy* was originally bound. Here was a certain specified voyage, of fixed points, limited duration, involving prices and quantities, susceptible of almost mathematical certainty, —very different from the aerial voyage among the clouds to which it is compared. Yet, the Supreme Court (at page 560) say: "In the opinion of the court, this item was also properly rejected. The probable or possible benefits of a voyage, as yet *in fieri*, can never afford a safe rule by which to estimate damages in cases of marine trespass. There is so much uncertainty in the rule itself, so many contingencies which may vary or extinguish its application, and so many difficulties in maintaining its legal correctness, that the court cannot believe it proper to entertain it. In several cases in this court, the claim for profits has been expressly overruled," &c., (citing two of them.)

The remark quoted in the argument for the claimants is not made in connection with what is above quoted. The doctrine there laid down is without qualification.

Cases of exemplary and vindictive damages do not go upon the ground of compensations, but of punishment. They furnish no authority for these speculations and conjectures of profits. As to all such calculations, the doctrine of the Supreme Court is as explicit as it is philosophical. It is not

supposed necessary on this occasion to go further than that tribunal for authority.

In all cases claiming exemplary or vindictive damages, evidence of the conduct of both parties is weighed, and the rule of natural justice lies at the foundation. In the present case I fancy that no eloquence, however inflamed, could move a jury to more than one cent damages.

But this is not a case submitted by the Republic of Paraguay for *punishment*; or for *vindictive damages*; but simply for *compensation*, if compensation be due. This is the extent of the submission.

If the doctrine contended for by the claimants can be sustained, the shortest way to fortune is to set on foot some enterprise in Spanish America, under a Hopkins or a Morales. If a pretext can be made for abandoning it in its infancy, as strangled by a government less powerful than our own, then it is to be taken for granted that all the changes and chances of this mortal life, all the dangers of the seas, all the risks and wrecks of speculation, are insured against by that government; and it is to be assumed that in a few months the exceedingly rare results of years of labor and vicissitude have been actually attained, and being thus lost, are to be made good by the insurer.

Nothing can be further from the certainty, or reasonable approach to certainty, which characterizes all judicial proceedings; and so this company have shown that they consider the case to be. They have been all the time at sea, without chart or compass, as to their measure of damages. They seem to have had the idea that the "millions in the custom house" of President Lopez ought to be taken into consideration, as if the company had been metamorphosed into a young damsel irreparably wronged by him, under a promise of marriage unfulfilled. They have delighted themselves with the idea of fancy damages, taking it for granted that the just pride of nationality and the true sensitiveness of patriotism, which characterize the American people, would necessarily be excited, and be kept excited to the end by the "false clamor" of Mr. Edward Augustus Hopkins. Accordingly, they never continued long in one stay as to the value of their expectations of this claim. It is curious to review their pretensions.

Bearing in mind the \$5,000 of Mr. Ferguson's estimate of all the movables at San Antonio, the \$2,500 which the real estate in Asuncion cost, the \$237 for the real estate (with bad title) at San Antonio; the inventory of the *curta supellea* at

the cigar factory; the debt of \$10,000 and interest to the government, and the balance of over \$6,000 due on it after applying all these values, we might open our eyes sufficiently wide at Mr. Hopkins' first estimate of damages.

In his despatch of August 30, 1854, to Mr. Marcy, he says: "But should the extraordinary avarice of this old man Lopez be made to pay two or three hundred thousand dollars for our reclamations and expenses, &c., all would go well for years to come."

And to fortify this exaggerated suggestion he speaks in the same despatch of "the millions locked up in the custom-house."

But this was only the begining. In the short space of three days the claim had grown to double its original measure.

On the 2d of September he says: "The delay of a year before these things can be arranged, the entire ruin of our commercial operations in Paraguay, the expenditure per last balance sheet of \$116,000, the destruction of our credit, and that of my personal, official, and mercantile character, under the continued calumnies of the government press here—the loss which will accrue to us, when at this moment in full and successful operation (!) after many disasters—all will not be satisfied, principal and interest, by the payment of a less reclamation than \$400,000."

This is pretty rapid vegetation. But when we consider, that besides all the conjectural profits, and everything else, principal and interest, for the company, there is included a liberal compensation for the loss of "my personal, official, and mercantile character," it seems extremely moderate when compared with the next stage of expansion. In the short space of three months, on the 15th day of January, 1855, the company addressed President Pierce, and claimed, exclusive of Mr. Hopkins' "personal, official, and mercantile character," the enormous sum of \$935,000.

Nothing daunted by Mr. Marcy's cool and rather cutting reply, we find them moving forward among imaginary millions, until, in the letter to Mr. Bowlin, (which shows very "*serious objections to any commission*,") in October, 1858, they actually declare that the value of these exclusive privileges alone is not less than five million dollars!

This exceeds the marvelousness of the fable of the bean stalk of Jack the Giant Killer!

But at the same time, in a letter marked "*private and confidential*," they tell Mr. Bowlin, that if the thing can be set-

tled without any difficulty, they will be satisfied with five hundred thousand dollars; that is, ten per cent. upon the value of their patents, or (viewed from the other end) one hundred times the value fixed by Mr. Ferguson upon their movable property at San Antonio, or more than one hundred times the whole value of all their property, real and personal, as ascertained by judicial proceedings, and applied to the partial payment of their debt to the Republic.

Upon the whole case, it is confidently submitted that no award whatever can be made in favor of the claimants.

The unfortunate occurrence with the Water Witch, settled so amicably and so honorably for both governments, being adroitly connected with this case by those whose interests required it, gave to it a color and an importance which it would never otherwise have obtained. The government of the United States did no more than was its duty in requiring that a claim solemnly made by respectable citizens, and supported by a show of evidence, should be attended to and settled as justice might require. The patriotism of the administration, and its vigilance to protect its citizens, have been made manifest in this as in other instances. Its resolution that right shall prevail, has been exhibited in the selection, to sit in judgment here, of an eminent citizen, who will pardon me for saying, even in his presence, that all his countrymen, of all parties, have ever confided in his conscientious love of justice, and his enlightened ability; while his colleague enjoys an equally elevated character in the country of his birth and allegiance.

To a tribunal so constituted, I submit, with confidence, the cause of my illustrious client.

J. MANDEVILLE CARLISLE,
Counsel for Paraguay.

OPINION.

The United States and Paraguay Navigation Company had been organized, by an association of enterprising citizens of Rhode Island, in the Fall of 1852, and chartered by the Legislature of that State in June, 1853. The capital was one hundred thousand dollars, with liberty to increase it to a million, for the general purposes of trade.

Mr. E. A. Hopkins, who had been mainly instrumental in getting up the company, became its general agent for the transaction of its business south of the equator, with a salary of two thousand dollars per annum, and by the same contract entitled to five per centum on its profits, until his share of the profits should reach thirty thousand dollars, when he was to be paid ten thousand dollars in cash, and the other twenty thousand dollars in stock of the company at par. He had been likewise appointed the Consul of the United States for Paraguay.

Mr. Hopkins had resided many years in that country. His favorable accounts of the valley of the La Plata, of the fertility of its soil, its salubrious climate, the absence of industry and enterprise among its citizens, their total ignorance of the mechanical arts, commerce and agricultural pursuits, presented to his associates a field for enterprise that promised, in their estimation, unbounded wealth, such as had never been realized, except by British merchants in the East Indies.

Paraguay was selected as the chief theatre of their operations; but the contract with Mr. Hopkins constituted him their agent for all parts "south of the equator," indicating a more extended field.

For thirty years the government of that country, nominally a Republic, had been, under the control of Doctor

Francia, an absolute despotism. His policy had excluded foreigners, and prohibited all intercourse with foreign nations; had paralyzed the industry of the country, and rendered its population entirely subservient to his will.

Upon his death, which occurred nearly twenty years ago, Carlos Antonio Lopez had been selected as his successor, under a modified government, and with the title of President. He had the sagacity to see the evil influences experienced by the people from the policy adopted by the Dictator, and patriotism enough to seek a remedy. He encouraged the arts and industry by the most liberal patent laws, securing rights for inventions, improvements, and the introduction of new and useful machines, thereby promoting agricultural and mechanical industry; and still more, by opening to commerce the great rivers Parana and Paraguay, which nearly surround the country. In the efforts to improve the condition of the citizens, long accustomed to oppression and injustice, he could not fail to perceive that such a change in their condition, to be permanently beneficial, must necessarily be gradual.

He found the Republic surrounded by States, constantly in agitation, at war with each other and among themselves; all was anarchy and disorder. Under such circumstances, it was no easy task to establish order and peace, and to promote industry and the arts among his own people. It could only be accomplished by a firmness, vigor and energy in his administration which would be regarded in other countries (more enlightened, and more accustomed to self-government) as tyrannical and oppressive. It could scarcely be expected that the ideas of rights of person and property, of political and civil liberty, and the administration of justice, as understood and practiced in the States of this Union, could be at once introduced and put into successful operation in the infancy of a Republic like Paraguay.

That a more rapid advancement of industry and civilization has been attained under his administration, is generally conceded. Proceeding in this spirit, he seems to have hailed with alacrity the prospect of friendly relations with the United States.

Captain Page, in his narrative of the scientific expedition under his command, says, that the government extended to him "a series of national courtesies," which commanded his respect. "Indeed, (he says,) government hospitalities represent a characteristic of the Paraguayans. A more generous,

‘ single-hearted people it is impossible to find, and they have
 ‘ a native tact which rarely offends even the conventional
 ‘ ideas of those who have associated more with the outer
 ‘ world.”

The kindest treatment was extended to him and his officers until the rupture with Hopkins. Upon the arrival of Consul Hopkins and his employés, which took place in the fall of 1853, they were received with the utmost cordiality, and every possible aid generously extended to them. The soldiers of the Republic were turned out of a barrack for their accommodation, without any compensation for its use. Aid was cheerfully given to Mr. Hopkins for the selection of suitable sites for the works he contemplated. Laborers were selected and ordered into his service, for a very moderate compensation; and when President Lopez found the company embarrassed with disasters, and with the debts they had contracted, he liberally and generously extended to them an accommodation of ten thousand dollars for two years, from the treasury.

Stronger evidence of a desire to cultivate the good will of the company, and to secure the confidence and respect of the citizens of the United States, could not have been given, than was exhibited in the conduct of President Lopez, and the citizens generally, in courtesies and favors freely and cheerfully extended to Captain Page, his officers and men, and to the agent and servants of the United States and Paraguay Navigation Company.

Many of these acts, so beneficial to these claimants, were of a nature peculiar to a government of strong powers, and a people unaccustomed to question their extent, and without which the establishment could not have been put in operation. Mr. Hopkins, in his letter to Governor Marcy, of 22d August, 1854, says, “I knew well enough its [the government’s] arbitrary character, and believed the people to be unfit to govern themselves.”

Mr. Hopkins, then, with a full knowledge of the institutions and laws, the customs and habits of the people, voluntarily selected for himself and employés that country as a residence and place of business. Thus, they became entitled, as citizens of the United States resident in Paraguay, to all the immunities, rights, and privileges granted to the people of that State by their laws, and made themselves equally liable with them to the penalties and punishments imposed

X for an infraction of those laws. And more, as citizens of the United States, they owed it to themselves and to their own country, as well as to the infant Republic just emerging from tyranny and oppression, to have set an example of forbearance, moderation and justice, that would have reflected honor upon the institutions of their own country, and have inspired the people of Paraguay with new zeal and energy in their struggles to secure for themselves institutions producing such results.

Whilst the company were indulging in golden dreams of "untold wealth" seldom if ever realized, there seems to have been lurking in the mind of their agent, Hopkins, an enthusiasm for "progress and civilization" and "reform" approaching fanaticism, which led him to censure other institutions than those of his own country, and to condemn the conduct of other public officers with whom he was brought into connection by his consular position, whose ideas did not conform to his visionary notions.

Mr. Hopkins continued to act as general agent of the company, as a partner, and as consul of the United States, until the 1st September, 1854, when his exequatur was withdrawn by President Lopez, and he and his employes abandoned the country, alleging that they *were expelled*, their *business broken up*, and their property confiscated by him. For these alleged wrongs and injuries heavy damages are demanded.

A question arose, upon the opening statements of the counsel for the claimants and the Republic of Paraguay respectively, touching the jurisdiction and duty of the commission to inquire into the origin and nature of the transactions upon which this claim was based, so as to determine whether, in fact and law, the Republic of Paraguay owed any pecuniary satisfaction whatever to the claimants.

The question was discussed orally by counsel, after the reading of their opening papers, and was again treated to some extent on both sides in the concluding arguments. It has received the most deliberate consideration.

On the part of the claimants, it is fully presented in their summing up of the case. They say:

"In this case, the wrong is beyond question. It appears from the memorials of the company, from the recorded judgments of the Department of State under two administrations, from the messages of the President, from the solemn

action of both branches of Congress, and from the treaty itself, which assumes the wrong, and constitutes a commission to assess the damages.

"It is a peculiarity of this commission that it is formed with reference to a single case and for a single purpose. Ordinarily, a claims commission is authorized to consider and determine all such claims of a certain character as may have been presented within a given time. In such cases, the treaty assumes only certain general facts, such as the previous existence of a war, the appropriation of a sum of money, or some general principle of liability. Neither of these assumptions would be inquired into by a commission. In this case, the whole subject-matter of the negotiation which led to the treaty having been a single claim, it was easy to make the convention definite, and to confine the duties of the commission to a single point. This has been done. The treaty assumes the wrong committed, and the liability of Paraguay, and only authorizes the commissioners to assess the amount of damages. It is a simple question of how much?"

"If there was any ambiguity in the convention on this point, it could not fail to be removed by a reference to the proceedings which led to the convention.

"The first application of the company to their government was dated January 15, 1855, and requested that 'such measures may be taken as to me [the President] may seem meet and proper, to demand of the government of Paraguay, and enforce the payment, as indemnity for our losses and the destruction of our business in that country, the sum of \$935,000.'

"The statement of Mr. Gallup (see his letter to Mr. Bradley, of July 8, 1855) shows that Mr. Marcy, the Secretary of State, 'although at first somewhat prejudiced against it, [the claim] at the last interview I had with him, expressed himself satisfied that a great outrage had been committed upon our citizens by the President of the Republic of Paraguay, and that he should make a demand upon his government for indemnity.'"

"On the 2d of June, 1858, Congress adopted a resolution authorizing the President to adopt such measures and use such force to secure justice from Paraguay as he might think necessary."

On the part of the Republic of Paraguay, the counsel, in his opening statement, said:

"I. The counsel for the claimants assume, as a foregone conclusion, that wrong and injury, in the transactions upon which this claim is based, have been done by the Republic of Paraguay.

"This is utterly denied. And it will be respectfully insisted that it will be for this honorable commission not to take for granted, but to require to be here proven and established, in fact and law, the allegation that, by reason of any matter or thing done or permitted by the Republic of Paraguay in the premises, any responsibility in damages to these claimants rests upon it.

"This commission is organized under the law of nations, and the terms of a treaty or convention between sovereigns of equal dignity in the view of that code. The instructions given by one of these high contracting parties to its minister, its executive messages, the reports of committees, or other proceedings of its legislature, referred to in the opening statement, can have no other weight or value than as exhibiting, in an imposing form, the claim which is here made, and is here to be established or rejected. They are not even entitled to be regarded as the deliberate conclusions of the government from whom they emanated, since they are founded exclusively upon the case, as made *ex parte*, by those whose interests and feelings may have naturally colored their representations. By the solemn act of the United States, in entering into this convention, it is stipulated that this claim shall be here '*investigated*' and '*adjusted*,' AND '*its amount determined*,' '*upon sufficient proof of the charges and defences of the contending parties.*'" (Convention, Art. II.)

This is the general outline of the argument.

The question which it presents seemed to be altogether of a technical nature, and quite too narrow and unsubstantial to be of any practical importance, in a matter of public law. Nevertheless, it is very evident, that from a very early period in the history of this claim, the claimants steadily looked to the foreclosure of all inquiry into the *foundation of the claim*, and labored to place the Republic of Paraguay in the condition of a defendant in an ordinary suit at law, who had suffered judgment to pass, reserving only the right to have an inquiry of damages. If this could be admitted—and it would be certainly an anomaly in international affairs—the result would be practically unimportant; because, in order to ascertain the damages, especially where they are claimed to

be punitive or vindictive, there must necessarily be an investigation into all the facts and circumstances, so as to determine the *animus*, and every other element properly entering into the measure of damages.

Such an inquiry, conducted according to the municipal law, might possibly result in merely nominal damages. But a formal award, made by a mixed commission, under treaty, giving to the claimants "*one cent damages*," would be simply ridiculous. Such a technicality would be unbecoming the dignity of nations, and repugnant to the spirit of the public law.

There was no difference of opinion between the commissioners upon the question. They concurred in holding, that their respective commissions, the oaths which they had taken as prescribed by the third article of the convention, the language of that convention in all its parts referring to the matter, and the nature of the subject submitted to them, required a full and unrestricted examination of the claim. To ascertain the "*amount*" of the claim, necessarily obliged them to determine between 0 and the highest amount which figures could express, according to the exigencies of the proofs.

Any other view of the subject would seem to be equally irreconcilable with the terms of the convention, as with justice and fair dealing.

By the first article of the convention, "the government of the Republic of Paraguay *binds itself* for the *responsibility* in favor of the United States and Paraguay Navigation Company, *which may result* from the decree of the commissioners, who, it is agreed, shall be appointed as follows." By this article the liability of Paraguay was distinctly admitted, no doubt. But *what* liability? The article answers, "the responsibility which *may result* from the decree of the commissioners." Can this be understood as a stipulation, that the commissioners shall, at all events, fix *some* responsibility to *some* amount, upon that Republic? If so, *what* amount was to be this minimum? If it were not fixed by the terms of the convention, (and it was not,) in what other mode was it to be arrived at? The second article answers by "*sufficient proofs* of the charges and defences of the contending parties;" and the third article requires that the commissioners shall be sworn "*fairly and impartially to investigate the said claims, and a just decision thereon render, to the best of their judgment and ability.*" It then necessarily follows that the whole

matter of this claim was submitted to the "decree" of this commission.

Before entering upon an investigation of the accounts submitted, it seemed desirable to ascertain the precise demand made by the company, and for this purpose all the papers on file in the Department of State were carefully examined. The following statement will show the claims set up at different times.

The letter of Mr. Hopkins to the Secretary of State, dated 30th of August, 1854, advises him that "if the extraordinary avarice of this *old man Lopez* should be compelled to pay *two or three hundred thousand dollars* for our *reclamations*, expenses, &c., all would go well for years to come." And again, in a communication to the Secretary, of 2d September, 1854, he tells him:

"The *delay* in having the claim settled; the entire ruin of their commercial operations; the expenditure of \$116,000, shown in their last balance sheet; the destruction of their credit; the destruction of my own personal, official and mercantile character; the calumnies of the press;—*all will not be satisfied, principal and interest, by the payment of a less sum than four hundred thousand dollars.*"

So the claim for damages stood, until their memorial of 15th January, 1855, was presented to the President of the United States, claiming \$935,000.

No specification of items accompanied the memorial, but there was filed in the Department of State, under date of 31st January, 1855, by Messrs. Arnold and Gallup, the following statement, exhibiting the items upon which the claim was founded:

- "For property in Paraguay, being real estate in Asuncion and San Antonio, with costly improvements made there, sundry mills, heavy machinery, tools, &c., confiscated, seized and rendered worthless, by the arbitrary conduct of that government, valued as per the accompanying deposition of George M. Boyd, and certificate of Lieutenant James H. Moore..... \$500,000
- "Property at the mouth of the river, being a clipper schooner, two river steamboats, built for the upper waters, a large saw-mill; and

other machinery and general merchandise, costing the claimants nearly \$80,000 in cash, and rendered useless to the company by the acts of said government, valued, as per aforesaid deposition and certificate, at.....	100,000
"For interest from 1st September, 1853, to 1st May, 1855, (average time,) upon \$350,000, the present cash liabilities of the company, at 6 per cent. per annum.....	35,000
"The actual damages sustained in the interruption of business in Paraguay, destruction of commercial interests along the river, and entire loss of credit, upon the sudden and wanton outrage committed upon the company by the government of Paraguay, estimated at a moderate consideration of 50 per cent. upon the valuation above of \$600,000, which was accompanied by the affidavit of George M. Boyd, and a certificate of Lieutenant James H. Moore.....	\$300,000
	<hr/> 935,000" <hr/>

Governor Marcy replied, 7th March, 1855, stating to them the propriety, if not the necessity, when making a demand on a foreign government, that the claim should be just, *"and the amount of losses and damages should be fairly estimated. In this latter respect particularly, the proofs submitted by you are very inadequate. There is no evidence filed of the company's title to the property, no evidence as to the nature and character of the grants, and no reliable evidence as to the quantity or value of the property owned by the company."* He further informs them that, *"the actual cost of the property, and not only the amount, but the items of the expenditure on improvements, with a particular description of the improvements, ought to be given."*

On the 14th March, Mr. Gallup, in the absence of Mr. Arnold, replies to this letter, vindicating the demand as presented, and informing him that there was no other testimony in the country as to the value of the property than the deposition of Boyd and the certificate of Moore; *that the title deeds, grants, and other evidences of property, are all in the possession of our agent in South America, retained by him for*

use before the Commissioner, when the claims shall be finally adjudicated."

On the 16th March, the company filed with the Secretary a statement of their treasurer, Bailey, exhibiting the liabilities and assets of the company, which is annexed to this report, marked B, viz :

Liabilities of the company in the United States...	\$361,103 10
And their assets	23,854 54

This was the extent of their response to Mr. Marcy's requisition.

The company continued, from time to time, to urge upon the Department some action in their behalf, in various supplemental memorials, accompanied by affidavits from themselves or employes not materially varying the proof, and not paying that respect to the suggestions of Governor Marcy which they merited. They, however, furnished a statement, in connection with these memorials, of the expenditures of the company, which is annexed to this report marked A and No. 3, by which the expenditures appear to have exceeded the receipts by the sum of \$402,520.37, and which statement, it may be observed, furnishes no dates for the respective transactions; and a supplemental statement, marked No. 1, is also exhibited.

These demands were twice sent to an agent of the Department in South America, with instructions for their settlement, but without any satisfactory result.

A serious misunderstanding took place between that Government and the United States in relation to the attack upon the Water Witch, and other indignities alleged to have been offered to citizens of the United States, which induced Congress to authorize the Executive to send a commissioner, accompanied by a naval force, to demand satisfaction for the insults and wrongs complained of, against the United States flag and citizens. He was instructed to have the claims of this company adjusted; his authority being limited to the reception of \$500,000, in accordance, it is supposed, with the wishes of the company.

Commissioner Bowlin was selected for this mission, and found no difficulty in adjusting all the demands of this government, without resorting to force except the claims of this company, which President Lopez regarded as unjust. Nevertheless, Mr. Bowlin says, in a despatch, that he could have

secured a large sum in cash, by way of compromise, if he had not been restricted, but further adds: "*It is due to President Lopez to say, whatever offer he made was avowedly to purchase his peace, protesting the smallness of his liability, if any at all,*" upon the claim of this company.

The company also instructed Mr. Bowlin in a *private* letter to receive \$500,000, in satisfaction, if it should be paid without resort to force, but if coercion became necessary, to insist upon \$1,000,000. They also sent a memorial to him, setting forth their claim to patent rights, for the new machinery claimed to have been introduced by them under the decree of 20th May, 1845, and representing, at not less than \$5,000,000, the value that these alleged rights would have been to them, if the government, without interruption, had permitted their use.

The foundation on which were erected "such golden dreams of untold wealth," as seem to have been constantly present to the mind of Mr. Hopkins, and more or less of his associates, will be best understood by their representations to Mr. Bowlin of the immense value placed upon their favorite machines, and then exhibiting the facts as proven before the commission.

They inform Mr. Bowlin that "the company had in operation the first and only steam saw-mill in that country, which at the time of our interruption by the Government of Paraguay, produced seven hundred feet, or two hundred and forty-seven Spanish varas per day, valued at the mill at fifty to sixty-two cents per vara, say fifty cents per vara, is \$123.50. The cost of logs in South Carolina or Maine with labor at one dollar per day, to produce the above quantity, would be five dollars, and labor sawing two dollars and seventy-five cents, making the whole cost of seven hundred feet per day seven dollars and seventy-five cents. Three hundred working days per annum would yield \$34,725 net profit of one saw per year, and for ten years, \$347,250."

Similar and more extravagant calculations were gone into for the purpose of showing the extraordinary profits of the cigar factory which had been established, and the brick-making machine which they proposed to put into operation; their statements accompany this report, marked E and G.

Similar claims were alleged to exist for patents for other machinery and agricultural implements; but no estimates are

given of the profits anticipated from their use. From all these advantages secured to them, as they allege, by the decree of 20th May, 1845, they expected to realize "*a wealth akin to that which the great commercial companies of Europe have realized in the East Indies.*"

Such are the claims and demands made by the company upon the Government of Paraguay, and for which the Government of the United States was urged to enforce payment, even to the extent of a war, with that new and feeble Republic.

Neither the original estimate of damages by Mr. Hopkins, the items furnished to the Secretary of State of 31st January, 1855, nor the statement of capital by Mr. Bailey, the treasurer, now seem to be relied on as the basis upon which damages are to be estimated; but only the losses of the company as exhibited in the annexed papers A and C. The former, as has been said, is somewhat remarkable in having furnished no dates to most of its items; the proofs, however, enable us to decide upon each of them, with all the accuracy necessary for this report. The paper C deserves a passing remark upon a few of the largest items, as illustrating the mode by which the claim has grown to its present size. It will be observed that the accounts embrace the whole expenditures of the company, and the profits and losses from its origin to the present year; a period of over six years, embracing traveling expenses, the fees of counsel, &c., &c.

The first two items, amounting to about \$114,000, constitute the cost of the vessel *El Paraguay* and its cargo, which sailed from New York about the 20th March, 1853, and cleared for "*Montevideo and a market,*" and which vessel, after encountering storms, and having cost large sums for repairs, was finally abandoned on the coast of South America near Maranham, was taken into port, condemned as unseaworthy, and sold, with a part of the damaged cargo, before reaching her destination at Montevideo. So much of the cargo as had been saved was reshipped to *Montevideo*, and then forwarded by the steamer *Fanny*, chartered for that purpose to Asuncion, the capital of Paraguay, where the cargo was examined by the officers of the Government, and a statement made of each article by Mr. Hopkins himself, and was valued by the regular appraisers, and the *ad valorem* duties paid by Mr. Hopkins.

The value of the whole cargo amounted to.....	\$15,300
On the 3d February, 1854, there was reshipped, out of the country, and drawback allowed Mr. Hop- kins.....	8,726
	<hr/> \$11,574
February 7th, afterwards, he imported other goods, valued at.....	291
	<hr/> <u>\$11,865</u>

These were all the goods ever taken into the country by the company, exclusive of the machinery, saw-mills, &c.

It does not appear from the evidence that President Lopez had any connection with the company, or even knew of the proposed enterprise, until the arrival of the *Fanny*, in October, 1853, with a part of the cargo of the steamer *El Paraguay*. This steamer is proved to have cost from sixty-five to seventy thousand dollars. What became of the residue of the cargo beyond what was shipped by the *Fanny* and taken into Paraguay, is not satisfactorily shown. Nor does this seem at all important; for it may be justly said there would seem to be as much propriety in charging the loss upon the ship and cargo to the government at Montevideo, to which place the goods had been shipped, or to Buenos Ayres, where the company afterwards had a trading house, as to Paraguay. Whatever might have been the tyranny and oppression practised by that government towards Mr. Hopkins and his employes, after their arrival and during their stay, surely can form no excuse for charging the losses which occurred by the dangers of the sea before their arrival.

Under this same head belong the charges on account of what is called "the second expedition," to wit, the schooner *E. T. Blodget*, with merchandise and two small steamers in detached pieces on board, and which never entered Paraguay. The schooner was wrecked above Buenos Ayres, at the Tigre river, and had no insurance to that point. The wreck was sold. The cargo, so far as saved, was taken to other countries, and disposed of in other markets by the company. This ground of claim is charged in the statement of 31st January, 1855, at \$100,000.

The whole amount of property taken into Paraguay was either sold or taken away by Mr. Hopkins, when he left the country, except the mills, machinery and agricultural imple-

ments, and some personal property of little value, left in San Antonio, and the effects in the cigar factory in the city.

All the property left, including the real estate and a large portion of that taken off by him, was under mortgage to the government of Paraguay, to secure the loan of ten thousand dollars.

Nevertheless, as is stated by Captain Page, in his despatch of 26th September, 1854, President Lopez satisfied him, "there was no intention on the part of the government, to prevent Mr. Hopkins taking out of the country any of his effects, merchandise, or property, notwithstanding the indebtedness of the company to the government to the amount of ten thousand dollars, for the payment of which he would not hold the property." At the time Mr. Hopkins was ordered to leave the cuartel (barracks) at San Antonio, he was requested to remove all the property. He removed some of the articles, declining to remove others. They were removed by the government, an inventory having been taken, and an appraisal made. These articles—a list of which, together with the proceedings, will be found in the papers sent—were stored in the city, they having been "thrown on the hands of the government, by Mr. Hopkins, and will be sold; the money given to Mr. Hopkins, if he will receive it, and if not, will be put into the treasury, for the benefit of his creditors, or for the company."—[Captain Page's despatch.

Another item of loss, not less extraordinary, grew out of the mode adopted by the company of increasing their capital stock, by issuing their bonds for \$100,000, bearing interest, and selling them to the stockholders of the company at a loss of over \$57,000. Such losses, and other like losses and expenditures of the company, can, upon no principle of law or equity, be made chargeable to the Republic of Paraguay.

There is no evidence showing any encouragement held out by Paraguay to this company, to induce them to go into that country as new settlers, or for the employment of their agricultural implements, machinery, &c., or engage in trade generally, other than the patent law of 1845. The enterprise was undertaken upon their own judgment, conducted by their own officers, in their own way. If they desired to avail themselves of patents, as offered by that law, they must necessarily be compelled to comply with its provisions. Patent laws, giving exclusive privileges, are always made, not only with a view to the interest of the patentees, but also

of the people after the expiration of the patent; and hence they generally require, as the decree of 28th May, 1845, did, that explanations must be made to the proper officer, in *writing, setting forth the particular invention or improvement*, or, as in this case, the *new machinery* to be introduced. The officer is then to judge of its importance and utility, decide upon the propriety of its allowance, and the time for which it should be allowed; and then it is for him to issue the patent. Until the patent is granted, no right accrues, under the law, to any person.

The opinion or recommendation of Señor Gelly, no doubt honestly made, and with the best motives, can have no more influence upon the construction of the decree than the opinion of any other private citizen, and could by no means be holden to excuse a non-compliance with the provisions of a law of the Republic. But he says distinctly, that the President would have no authority to do so, and that the granting of other monopolies than those provided for, in the law, would be unjust.

If the company had been induced by the liberal provisions of the decree of 1845, to engage in so important an enterprise, in which so much of their capital had been invested, it is remarkable that no effort was made, for eight or ten months, to secure the patents authorized by it, and which are now esteemed of such immense value.

The shipments made by the steamer *El Paraguay* and the *E. T. Blodget*, and the claims now set up for the losses sustained in these respects, present the naked question of the liability of a foreign government for shipments made to its territory, under the expectation of profits, which are lost by the perils of the sea before reaching the port of destination. If such liability exists, then favorable commercial regulations, liberal laws for settlers, or favoring immigration into any country, would make the government the insurer not only against the perils of the seas, but also for the prudence and discretion of the officers having charge of the vessels. The character of the government of the country to which such shipments are made, can have nothing to do with the question of its liabilities for such enterprises. Whatever of tyranny or oppression may have been practiced (it may well be repeated) after the arrival of Hopkins and his employes in Paraguay, could have no influence in producing the disasters which caused them such heavy losses.

Surely no one can believe that the loss of \$57,000 on the

bonds of the company can, with any propriety, be chargeable to that government. Again, interest on the debts of the company amounting to thousands of dollars, is charged against Paraguay, which, for the reasons before suggested, is wholly inadmissible.

To cap the climax, the extraordinary sum of \$300,000 is demanded as a remuneration for the trouble, anxiety, and loss of credit growing out of the imputed misconduct of President Lopez.

Such are the details of the claim of \$935,000, so often and so earnestly pressed upon the consideration of Congress, and the Executive Government of the United States, and the spirit in which the same has been presented will be seen in the letter of their counsel, Mr. C. S. Bradley, to General Cass, Secretary of State, hereto annexed, marked F.

The commissioners did not entertain a doubt that the Government of Paraguay could not, in any view of the case, be holden liable for any losses or expenses incurred by the company before October, 1853, when they took up their residence in Paraguay.

Nor can that government be justly holden responsible for any expenses or losses which they sustained in the business or trade prosecuted by them with other governments in South America, after they had abandoned Paraguay, which trade was continued for three or four years, at a very heavy loss to the company, as shown by the accounts exhibited with their memorials.

The remaining question, and the only one upon which the claimants have made even a plausible case, arises upon the allegation that their business was wrongfully broken up, their property confiscated, and their agents expelled from the country, and involves the inquiry whether such wrongful acts were done, and if so, what damages should be allowed in the way of compensation for actual losses, or in addition by way of punishment.

Upon this branch of the case, it is proper to say that as to the alleged wrongful acts of Paraguay, the evidence adduced by the company consists in the main of the productions directly or indirectly of their agent, Mr. Hopkins, in his character of consul, evidently influenced by that of general agent and partner of the company. His correspondence with the Secretary of State, and the papers inclosed in his dispatches, all bear the impress of his own peculiar character and mind, and are little calculated to have weight before any tribunal

of a judicial character; indeed it may be truly said, that upon a critical examination they furnish strong internal evidence against the justice or validity of the claim. Among these may be noted the formal proceedings of a regularly organized meeting, consisting of himself and five or six persons connected with the company, at which certain resolutions were passed, condemning the conduct of Lieutenant Page and President Lopez, in terms equally violent and vague, and a paper purporting to have been drawn up for publication, in answer to charges against Mr. Hopkins in the newspaper at Asuncion, but which appears only to have been used as a defence of Mr. Hopkins' consular conduct with the Secretary of State, to impugn the character of President Lopez, and to advance the interests of the company in this claim. Of the same nature are certain depositions of some six or eight Paraguayans, resident in Buenos Ayres, who are shown to be refugees, and members of a revolutionary club in that city, for the overthrow of President Lopez's government, none of whom profess to have knowledge of any fact upon which this claim is founded, but who denounce in strong language the personal and political character of President Lopez, and the general operations of his government, to which they attribute an influence, descending to the most minute affairs in the private life of the humblest citizens.

This kind of evidence; the action of Congress, or the executive officers of the government, upon the *ex parte* statements of those most deeply interested in this claim; the public opinion in the adjoining States, which may have been formed by the misrepresentations and falsehoods of those whose interests are involved, and who may be entitled to the profits arising from the successful prosecution of this claim;—do not seem to be a safe foundation upon which heavy damages are to be awarded. The acts of tyranny and oppression should be shown, which, as is alleged, expelled the company, and broke up their business; the value of the property confiscated should be exhibited as the best, if not the only, means of ascertaining the true amount of damages.

The company, aware of the necessity of some such proof as suggested by Secretary Marcy, have shown that the brother of the consul, C. E. Hopkins, was stricken on the back by a soldier with the flat side of his sword, for which, according to the affidavits of C. E. Hopkins and Mrs. Guillemot, (who was in company with him,) there was no excuse

whatever, no act done or word uttered by him to produce the blow, but which, according to the affidavits of the soldier and his two companions, C. E. Hopkins had provoked, by riding into the herd of cattle which he was driving, dispersing them and causing him much trouble in gathering them together; and *this* after he had been notified not to do so.

The consul, Hopkins, became greatly excited to find that his brother had been stricken by a common soldier, and, instead of having the case brought before a judicial tribunal of the district in which the offence had been committed, and having the soldier punished according to the laws of the country, made it a national case; his dignity as consul had been assailed in the attack upon his brother; the rights of an American citizen had been trampled upon; and the government of Paraguay was to be made responsible for the outrage! He accordingly addressed the government an angry and offensive note, demanding punishment of the soldier, and satisfaction for the offence to his brother, and alluded in the most offensive terms to other alleged indignities suffered by the American citizens from those of Paraguay. This led to a correspondence between him and the Secretary of State.

President Lopez, upon examining the case, seems to have entertained the idea that the brother of the consul had not in reality much cause of complaint against the soldier, as he had probably committed the first wrong; yet it was held to be the duty of the soldier to have reported the conduct of Hopkins to his superior officer, instead of redressing the injury when perpetrated, and therefore the soldier was ordered to be punished with three hundred lashes.

This transaction, which occurred 22d July, 1854, Mr. Hopkins states in his letter to the Secretary of State, to have been "the commencement of the difficulties between himself and the President."

Some newspaper publications on the subject seem to have produced violent language on the part of Mr. Hopkins, against President Lopez, wholly unbecoming the position he occupied.

The other charges to which he alluded in his letter, seem to have been of petty annoyances, rude and improper language addressed by some of the populace in the city to Mr. Hopkins and some of his companions, whose supercilious and haughty conduct toward the people, as well as the government, had rendered them very odious, and occasioned

harsh words to be used in the streets, throwing "missiles," such as orange peelings, pieces of cigars, and sand, into the door and windows of their houses, by day as well as by night, and which is attributed to the influence, if not direct sanction, of the President or his officers, and not to any misconduct or provocation on their own part; and yet when the complaint was made, without designating any offender, a guard of soldiers was stationed at their house for their protection. The annoyances are alleged to have continued, and become even worse; yet no individual could be named so as to enable the police officers to punish them.

Such acts of incivility and rudeness toward the consul of the United States and his family resident in the city, deserved punishment, which would undoubtedly have been inflicted on the offenders, if they could have been discovered. Mr. Hopkins could not ascertain their names, at least made no report of any to the government, at the same time most injudiciously imputing to the officers of the government a knowledge of their commission, and strongly intimating a connivance at the conduct of the offenders.

It never seems to have occurred to Mr. Hopkins, or his associates, that his own arrogance and presumption, his haughty and overbearing conduct among the citizens, his violent and denunciatory language toward the Government and officials, were well calculated to arouse the hostile feelings of the people against them, and produce the annoyances of which he complained. Mr. Falcon, the Secretary of State, in his letter to Governor Marcy of 2d September, 1854, speaks of "the repeated complaints made by the officers of the districts against the conduct of Mr. Hopkins and his servants; the want of respect and civility" to the justices, "*his shocking expressions*" against any who dared to complain of his conduct, his "disregard of port regulations," and "contempt towards the police officers." And further telling him, when speaking of the excesses of Mr. Hopkins, "*they have been repeated by a series of rudenesses, and bitter recriminations against the most excellent Government of the Republic, which has, for some time, been astonished at the audacious provocations of Mr. Hopkins;*" and concludes by telling him, "*If Mr. Hopkins had accepted the consulate for the express purpose of discrediting the worthy Government of the United States, and his fellow citizens, he could not have done more to create disaffection.*"

When speaking of the punishment of the soldier Sylveiro, Captain Page says, "Had Mr. Hopkins been content with

making a *simple statement* of the affair, and not have accompanied his *communication with irrelevant remarks, passing censure upon the government and people of Asuncion*, I am informed by the President that the difficulty would not have occurred." And again, he says, in his letter of 1st September, "If Mr. Hopkins expects to involve me and the Water Witch in the *disgraceful affair between the Government of Paraguay and himself*, he deludes himself with very false hopes." Referring to the publications in the *Seminario*, he says, "By a most impolitic and unauthorized course, he has brought upon himself the wrath and indignation of a government which has the power, because of its peculiar relations with its people, to embarrass and render profitless the entire enterprise of those American citizens who have so unwisely put him at its head. This may be most effectually accomplished, (if such be the disposition of the government,) without infringing one single article of the treaty between the two nations, or committing one single overt act which would form the basis of complaint. Lieutenant Powell, among the most intelligent officers of the navy, says of him, "Mr. Hopkins was well known in the navy as an egotistical and presuming man, and one who had constantly embroiled himself in all kinds of difficulties, while in it."

Mr. Ferguson, the millwright, who had been in the employment of the company all the time in Paraguay, whose good sense, modesty, and frankness before this commission made a most favorable impression, says, when speaking of the deportment of Mr. Hopkins while there, "*I think his conduct was scandalous, according to my ideas of morality, and shocked even the people of that country.*" And being further interrogated as to his course generally among the people, and officially, whether it was kind and conciliatory, answers, "*It was quite the reverse. It was overbearing and tyrannical. He had a swaggering, bullying way with him in all his relations of life, and his deportment was always tyrannical and overbearing.*"

Such conduct on the part of the consul toward the government and the people of Asuncion, was well calculated to produce an unfavorable impression toward him and his associates, as well as their countrymen, who were but little known except through them, and to lead to the petty annoyances of which they complain. His conduct seems to have made a not less unfavorable impression upon the officers under the command of Captain Page. Mr. Hopkins, in his letter to

Secretary Marcy, 25th August, 1854, says, "In the midst of these affairs and publications, the five or six officers of the navy, who are now here, *continue to cut my house and presence, thereby causing infinite moral aid and comfort to President Lopez.*"

So wholly forgetful did he seem to be of that dignity and propriety of conduct which should characterize a representative of the United States, and of the respect and courtesy due and always extended to the chief officers of another government, that it was made a matter of boast that he had forcibly entered the audience chamber of President Lopez, in his riding dress, whip in hand, despite the remonstrance of the guard, and in violation of the rules adopted in that country of intercourse between the President and citizens—as if designedly to bring into contempt the authority of the President among his people.

Such conduct towards the people of Paraguay and their President, without *reference to his moral conduct*, which Ferguson designates as "scandalous," may be supposed to account more satisfactorily for the "indignities" and "annoyances" of which so much complaint has been made, than any supposed interference or encouragement of them by the President or his officers.

In relation to this whole subject of the alleged "insults" and "outrages" complained of by the company in their memorials, and which could not fail (coming from a respectable source) to attract the attention of the executive and of Congress, it is proper to make a few remarks.

In the first place, no complaints of this sort appear to have been made, until the occurrence between Mr. C. E. Hopkins and the soldier, on the 22d July, 1854. The letter addressed by Mr. Consul Hopkins to the Paraguayan Secretary of State, on the 25th of the same month, asserts, in general terms, that such things had taken place. The affidavits of Boyd, Morales, Hines, and his wife, all made subsequently, make the same accusations. Giving to these affidavits all the weight that can possibly be claimed for them, it would seem that nothing had occurred to which private persons are not liable under the oldest and best ordered governments, if there should be any provocation in their own personal deportment and intercourse with the people. There is nothing in the evidence tending to show a denial of justice to any person who had recourse to the ordinary tribunals under such circumstances; and surely

there can be no propriety or pretext of right, in claiming for the persons engaged in this speculation a *status* different from that of the citizens of the country generally. No claim whatever is set up on account of these supposed insults and outrages. The persons who may have been annoyed by them make no claim, but appear as witnesses for the company, upon the claim made by it in its corporate capacity.

All this part of the case, therefore, even if it were satisfactorily made out by the proofs, (which it is not,) could have no effect beyond that of aggravating and giving color to the charges of "expulsion," "confiscation," and "breaking up" of the business of the company.

As to the "*expulsion*," it is perfectly clear that nothing of the kind took place. If there had been an expulsion of the company generally, or of any person in particular, without doubt there would have been some explicit or intelligible evidence of the fact. Not only is there no affirmative evidence of it adduced by the company, but there is clear evidence to the contrary. The conclusion arrived at by Mr. Marcy, upon the official despatches, and the first memorial and proofs of the company, is abundantly sustained by the thorough examination of the whole case before the commission. In his letter to Messrs. Arnold and Gallup, 7th March, 1855, he says:

"It is evident throughout the whole correspondence that the opposition of the Government of Paraguay was confined solely to Mr. Hopkins; and Lieutenant Commanding Page, in his despatches on the subject to the Navy Department, while condemning in strong terms the arbitrary and oppressive conduct of the government, confirms the opinion that the hostility was to Mr. Hopkins and not to the company of which he was the agent. And Mr. Falcon in a letter to Mr. Hopkins, wherein he informs him of the resolution of President Lopez to decline any further communication with him, in his capacity of agent, holds the following language, 'It is, however, to be well understood that any other person of better conduct towards the government of the Republic can make such propositions as time shall render proper.' "

But even as to Mr. Hopkins there was no expulsion. The account given by Captain Page on the spot, in his despatch to the Secretary of the Navy, dated Asuncion, 26th September, 1854, is relied on as truthful and accurate. The follow-

ing extracts are deemed important to the proper understanding of this pretended expulsion :

"Mr. Hopkins declined allowing any one of the persons under him to carry on these works, and came to the conclusion that the course for him to pursue was to throw the responsibility on this government, and look to a reclamation being made by the government at home. * * * The opposition of the government was confined to himself and a Mr. Morales, who had made himself odious to the government by some very imprudent and ridiculous remarks. * *

"Acting Lieut. Powell used his best endeavors, both for the interest of this company and to avoid collision with the government. He desired to know from Mr. Hopkins if he would allow another to act in his stead, stating that to this the government had no objection. He declined doing so. * *

"I called on the President on my arrival. He expressed himself as having been outraged by the remarks, the communications, and conduct of Mr. Hopkins and Mr. Morales and said that matters had gone to such a length that he would not now permit Mr. Hopkins to do any more business here. *I requested to be informed if other Americans belonging to the company would not be allowed to do business. He said that any Americans would be allowed to do business with the same privileges that were accorded to other foreigners, and that his objections were confined to Mr. Hopkins and Mr. Morales.* I stated to him that some of the persons of this company had said they did not feel themselves protected, and desired to know if they would not receive every protection from insult and injury. He said they should.

"The day following I saw Mr. Hopkins on board this vessel, having sent him word to meet me at a certain hour, for I had expected to have seen him the day before. He explained the circumstances involved in this difficulty, stating to me that he had thrown all the work they had in hand on the responsibility of this government, having been compelled so to do because of its action *toward him*, and that he *required or demanded of me* to join him in a protest to this government for the outrages that had been committed. His tone and manner were *in his usual style of presumption*, and I promptly informed him that his requisition and demand would not be granted. I assume this, in my humble judgment, as the proper course for me to pursue, because I could see no good resulting from such an empty boast, Mr.

Hopkins having taken *such steps before my arrival* as to preclude any action on my part towards a continuation of the operations of the company. *I stated to him the nature of my interviews with the President*, and at the same time assured him that if he or any American citizen residing on shore considered himself unprotected from insult or injury, he or they would find protection on board of the *Water Witch*. *He said he desired to leave the country, with those who were attached to the company*, and to take with him such effects and merchandise as he had in store and in his dwelling-house; but that he apprehended no merchant captain would consent to receive him on board, lest he should incur the displeasure of the government. I informed him that I would see the President on the subject, and if I could not procure him a passage with his effects, I would take himself, company, and effects on board of the *Water Witch* to Corrientes, where he desired to go.

"I called to see the President—singular as it may appear, nothing is done in this country without his knowledge and assent—and learned from him that he was willing and desirous that Mr. Hopkins should leave the country, and said that he would instruct the captain of the port to procure a vessel. No captain of a vessel would decline taking Mr. Hopkins on board, with his company and merchandise, if requested to do so by the captain of the port, because he would be assured that by so doing he would be acting in accordance with the wishes of the President. * * * *

"This, Mr. Hopkins is aware of, and, for the interest of his company, he should have withdrawn himself actively from its operations, and have made a trial, at least, of the sincerity of the government in its professions of friendly disposition towards the company."

* * * "I should have mentioned in another part of this letter, that I ascertained from the President there was no intention on the part of the government to prevent Mr. Hopkins taking out of the country any of his effects, merchandise, or property, notwithstanding the indebtedness of the company to the government to the amount of \$10,000, for the payment of which he would not hold the property.

"At the time Mr. Hopkins was ordered to leave the cuartel at San Antonio, he was requested to remove all the property. He removed some of the articles, declining to remove others. They were removed by the government, an inventory having been taken and an appraisement made. These

articles, a list of which, together with the proceedings, will be found in the papers sent, were stored in the city, they having been *thrown on the hands of the government by Mr. Hopkins*, and will be sold, the money given to Mr. Hopkins, if he will receive it, and, if not, will be put in the treasury for the benefit of his creditors, or for the company.

"The operations of the cigar factory were stopped because Mr. Hopkins would not take out a license, in accordance with a decree of the government. These are arbitrary acts, and show the power of this government, but still, it is its mode of proclaiming the laws, and all have to abide by them."

There is no proof in the case, putting any other face upon the transaction than that which is here given by Captain Page. On the contrary, it is supported by all the evidence.

The passports were made out the very same day on which they were applied for, the 29th September; and although some difficulty occurred as to their delivery from the custom house, as reported by Morales to Captain Page, they were delivered, in fact, before the sailing of the *Water Witch*, and no obstacle interposed to the shipment of their goods, or the departure of the vessel; which was attributable, in a great degree, to the prudence and judgment of Captain Page. The President might justly and properly have insisted that the mortgaged goods should remain in the Republic, until the debt was paid. By the practice in most of the States of this Union, an attachment, or other process, in such case holds the mortgaged property until the maturity of the debt. The property sold, corresponded with the valuation made, and the opinion given of its value by Ferguson, as nearly as might be expected; and in the opinion of the commission, from all the evidence before them, *for its full value*. It is evident, therefore, that there was neither "expulsion" nor "confiscation," unless it be *expulsion* to require foreigners to conform to the laws, or *confiscation* to retain and take care of the property which they refuse to remove with them, though freely authorized to remove it, while under mortgage to the State.

But it may be proper, even at the hazard of repetition, to review more particularly, and under a distinct head, the effective property of the company in Paraguay, and the disposition which was made of it.

Setting aside the "privileges," "patents," and "monopo-

lies," which we have seen had no legal existence or foundation in justice, the remainder consists of the cigar factory in Asuncion, and the San Antonio establishment. For the cigar factory, it is in evidence, as before remarked, that the sum of \$2,500.75 was paid, and there was a license duly issued by the government, authorizing this property to be transferred to, and held by aliens. This establishment was in operation about ten months. It is proven by the claimants themselves, that it could not have been carried on without the active aid of the government. The people of the country, according to this testimony, were unwilling to labor regularly, and would only have engaged themselves for a few days at a time; and thus, no valuable progress could be made in the projected improvement upon their mode of making cigars, which required regular instruction and practice. This appears at page 51 of the record, in the testimony of C. E. Hopkins.

By the orders of the Government, this difficulty was avoided, and the necessary labor was supplied, *under compulsion*. Upon this point, it will suffice to quote from the affidavit of a single witness, which, besides being in the record, is appended to the Senate report, (No. 60, 35th Congress, 1st session,) made by Mr. Douglas, upon the "difficulties with Paraguay." Mr. Hines, the "General Cashier" of the company, says, "Upon first commencing in Paraguay, the Government, through the Judge of *Peons*, provided us with *peons* for our mechanical department," (meaning the establishment at San Antonio,) "women and other laborers for our cigar factory." This point is clearly, and very carefully, made out by the claimants; indeed, it is insisted on in their memorial, (Senate report, p. 66,) in order to show that when these facilities were withdrawn by the government, the failure of the enterprise necessarily followed. But, it is not perceived that there was any pretext of vested right in these facilities. It has been seen that the company founds its claims upon the decree of 1845—the patent law—and the letter of Mr. Gelly written to Mr. Hopkins in the year 1848, more than four years before the incorporation of the company. There is not a particle of evidence of any other inducements or invitations or promises, express or implied, leading to the enterprise of the company. In neither of these papers (the decree or the letter) is there anything upon which to found a claim for the exercise by the government, of its practically absolute powers, (if they be so,) to compel the *peons*, or laborers, to

work for the company. It cannot be said, therefore, that the company proceeded upon any implied agreement, that these powers should be exercised for their benefit at all, still less, that they should be continued to be exercised any longer than the Paraguayan Government should find it consistent with the public order and its own policy and institutions to do so. These remarks apply to both the establishments of the company, that at San Antonio, as well as the cigar factory in Asuncion.

It appears by the evidence from the books of the claimants, that during the whole period of the existence of this factory, it produced a little over five hundred thousand cigars, and that the sales of cigars made by the company amount to \$3,382.51, viz: in the United States, \$1,895.71, and in South America, \$1,486.80. The whole amount, and all the particulars, of the goods, chattels, and effects, in that factory at the time it was closed, appear in the judicial proceedings put in evidence on the part of Paraguay; and no attempt has been made to contradict, impeach, or discredit the inventory or appraisement, notwithstanding that Morales was in attendance before the commission as a witness for the company, and was several times examined. These values may therefore be safely taken to be unquestionably correct. In addition to these, the company claim that they would have made large profits by carrying on the factory with the privileges of the decree of 1845; but it has been shown already that no rights were acquired under that decree. It has been asserted and argued, that President Lopez had dispensed with the terms of that decree, so as to give the company all its benefits, without a compliance with any of its corresponding obligations. But there is no evidence whatever in support of this; nor is it at all reasonable or probable.

The circumstances under which this factory was closed have been made the ground of claim. But it appears distinctly in the evidence that the license required by law had not been taken for the factory. If, as has been stated, but not proven, the delay in taking it had been assented to, or even procured by the government, yet by the 13th article of the decree of August, 1854, it was provided: "13. *Every industrial or commercial factory unlicensed will be shut, if the persons interested do not take out a license within three days.*" [Senate report, page 79; Record, page 55.] The testimony of Morales, the company's witness, shows that this factory was unlicensed, and C. E. Hopkins proves that the cost of

the license was that of the stamped paper only upon which the application was made. Morales further shows that upon the publication of this decree, Mr. Hopkins made application for the license for the cigar factory and the San Antonio mill, thereby recognizing the obligation to take out such license, and his previous omission to do so.

But in the same decree, article 14, the use of "any foreign commercial title" in the Republic, without express permission of the government, was forbidden. This prohibition may seem absurd, as well as arbitrary, tested by the institutions and circumstances of our own country. But whether it was expedient and proper at that time in Paraguay, is a question which it was for that government alone to determine. And if it were never so unnecessary and arbitrary, it is difficult to see how it could possibly affect the interests of the company. Mr. Hopkins had used the "foreign commercial title" of "General Agent of the United States and Paraguay Navigation Company." It is alleged that this article of the decree was directed specially to prohibit *him* from further using that title. Doubtless this is true. But if it be so, what was Mr. Hopkins's duty? Manifestly to conform to the decree, which could in no wise affect the interests of his principals or himself. But upon the first knowledge of the decree, he gave notice to the government that he was "General Agent of the United States and Paraguay Navigation Company," (a fact well known before,) and immediately thereafter, without waiting for any reply, he makes the application for the licenses, *carefully using the prohibited title*. The application was returned to him, with the explanation that it could not be entertained, as, in it, he violated the decree referred to. Now, it may be repeated, that all this importance attached to the use of this "title" is entirely foreign to American usages and ideas. But can the claimants sincerely believe that the internal policy of the country where they had established themselves, was to yield to them, and not they to it, in a matter of this sort? Were they to take all the advantages of this species of government—such as the impressment of laborers for their benefit—and yet claim exemption from a decree forbidding "the use of any foreign commercial title?" This seems to be the theory of this part of the case, for no other application was made for the license. Mr. Hopkins preferred to have the license refused upon this ground, and to submit to the terms of Article 13 of the decree, which provided that "every

industrial or commercial factory unlicensed" should be closed unless the license should be taken out in three days. The cigar factory was accordingly closed by the chief of police, in execution of this decree. The deposition of Morales shows that he was required by the chief of police to carry the sign "to the station house." Morales proves by his own deposition, (and no objection has been made to this proof,) that he is a naturalized citizen, a native of Cuba. This fact of obliging him to carry the sign was well calculated to produce a feeling of indignation and resentment. But it is not perceived how it could affect the claims of the company, or alter the fact that the closing of the cigar factory was in pursuance of a law to which all persons in Paraguay owed obedience.

The evidence shows, that there was no seizure or confiscation of the property. It was perfectly competent for the company to have reopened the factory on the same day, by merely complying with the terms of the law, which imposed no other obligation, than that of applying for the license, required in all cases, and paying \$16 for the stamp, without at the same time defying the government, by using the prohibited title.

The saw-mill at San Antonio was in the same condition with respect to this law. But in addition to this, there were other and more serious difficulties, provoked entirely by the indiscreet and unjustifiable conduct of the company's agent, Mr. Hopkins. In this connection it may be proper to make an extract from the statement or memorial of the company, which is appended to the Senate report, at page 66. They say:

"Notwithstanding unforeseen delays, upon the arrival of the expedition at Asuncion, the capital of Paraguay, in October, 1853, the agents of the company were received with the greatest favor. Permission to purchase land was conceded by the President; the use of the government barracks was granted to the company, free of expense, for the use of their employes; a loan of money was made upon the credit of the company for a term of two years; a large number of persons were impressed by the government, and paid by the company, to work in their cigar factory and other establishments.

"The President, Lopez, accepted, in his official capacity, the presents sent him by the company, and granted many

other extraordinary facilities for their operations. In verification of these statements, we refer to the affidavit of W. E. Hines, general cashier of the the company in Paraguay, hereunto annexed.

"The government of Paraguay has never denied, but makes a boast of these facts. We give an instance of its decrees for our benefit, and also the letter accepting and returning presents.

"The justice of peace of Ipiane will select from the natives of the suppressed community ten men, bachelors or married, of good conduct and assiduous in labor, and will deliver them to the citizen of the United States, Mr. Edward Augustus Hopkins, to be destined to work for him during one year in his establishment at San Antonio, with the monthly wages of three dollars, which he offers to pay, and providing victuals, upon the condition that every Saturday, after concluding the labors of the day, they can retire to their lodgings, and will present themselves the following Monday at daybreak ; and that they will receive said salary every two months, on condition, also, that if any one of the ten individuals should happen not to be of good character required, they will be withdrawn, with less wages for the days they have had hire in proportion to that assigned to men of labor, and will be supplied by men capable of performing the labors of the contract, it being recommended to said justice of peace to make the best choice of workmen. The same order will be understood on the same terms by the justices of peace of Guarambaré."

This is the account which the claimants themselves give of the reception they met with. It appears by the evidence, (and there is no contrariety on this point,) that Mr. Hopkins, acting for the company, attempted to procure a title to the government barrack and appurtenances, which he was then occupying by favor. All the proceedings are appended to the record, as well those under which Mr. Hopkins claimed as those subsequently instituted by the government. They speak for themselves. Without recapitulating them minutely, it might suffice to say, that Mr. Hopkins never applied for, or obtained, any license or permission to purchase the land, which was necessary, in the case of aliens, even where the government was not directly concerned, as in the instance of property occupied as a national barrack ; that he never had any official survey ; but of his own authority, di-

rected the line to be run so as to include the barrack; that he actually inclosed it, and with it, a public road, the only one leading to the port; and that he refused to evacuate the barrack when requested so to do by the government, which had gratuitously loaned it to him. •

The proceedings instituted by the government resulted in a decree, declaring the land where the barrack stood to be the property of certain infants, from whose mother, the widow Bedoya, Mr. Hopkins had purchased it for the sum of *seventy-five dollars*. That this was the whole purchase money has not been denied. The requisite steps were not taken to divest the infants of their title, or to authorize the holding of the land by aliens.

The real estate of the company was also embraced in the beforementioned mortgage, and consisted of about twelve acres of land at San Antonio, purchased from different individuals, costing \$237.50, and also the cigar factory at Asuncion, costing \$2,500.75. To the factory, the title had been perfected by deed registered, and possession given, and the assent of the President endorsed thereon, authorizing them as foreigners to hold the land as required by the laws of Paraguay.

The President esteemed the position of the barrack as an important point for the defence of the State against the incursions of the Indians from the opposite side of the river, and thought the most ready mode of getting out of the difficulty with Mr. Hopkins was to pay him back double the consideration money, which was submitted to him. He (Hopkins) desired time to consider of the subject, that he might himself make some proposition. Before he did so, the irregularity of the title was made known to the President, and a decree was passed, declaring his deed void, and that the property was necessary for public use, and directing the money to be refunded. It was offered to him, and declined. The President then took possession of it as public property for the re-establishment of the barrack, and it was immediately occupied by his soldiers.

Whether the decree and other proceedings were right or wrong, so far as it concerned the rights of the widow and children, it could not be considered unjust to the company; *their titles had not been perfected, and could not have been, except with the assent of the President*, and besides they were his tenants in the barrack, by sufferance, and could set up no opposing claim to his title, and they had mortgaged the lands

to secure the payment of a much larger sum than they were worth—and their title was sold under a decree made according to the laws of Paraguay, and the full value applied toward the payment of the mortgage debt, leaving a balance of the loaned money still due and unpaid, of over *six thousand dollars*.

It is further alleged that they were indirectly compelled to give up their business and leave the country, by the tyrannical and oppressive decrees of President Lopez. One of the most complained of was the prohibition of "all meetings of foreigners, except for the ostensible purpose of visiting, and innocent diversions are forbidden by day or by night." This was evidently designed to prevent the assemblage in the city of sailors and others accompanying the ships in port, which often ended in riots and bloodshed; and not for the purpose of preventing foreigners from meeting and transacting their ordinary business, as is alleged. There is no allegation that any such meeting for business, or for any lawful purpose was in fact interrupted. Of the same character was the prohibition of any person from wearing arms, or being out of their houses after night without carrying a lamp.

These were mere police regulations, which President Lopez had an undoubted right to establish, and it was the duty of the citizens of the United States, resident in Paraguay, to obey them; which might have been done with but little trouble.

It was known to Mr. Hopkins, that the objection of the President was to himself and Morales, on account of their misconduct, and that no objection would be made to any other citizen of the United States. It is strange that decrees so easily complied with should have been made an excuse for abandoning the interests of the company now represented so valuable, and that the voluntary abandonment of such of the property as Hopkins could not conveniently take with him, or convert into money, should now be made the basis of heavy damages against Paraguay.

It has also been urged that President Lopez offered to pay a large sum of money, (\$250,000,) and that the amount of damages could not fall short of that sum. It appears, from the statement of Commissioner Bowlin, already alluded to, that when the offer was made, President Lopez declared *there was little or nothing due the company, and that the offer was made to buy his peace*.

Propositions for a compromise of contests between contending parties, are not and ought not to be considered as an

admission of the liability of the party for anything, much less the amount offered and rejected, in any subsequent stage of the proceedings.

It should be a source of gratification to the government of the United States as well as its citizens, that Commissioner Bowlin, after having received prompt and full satisfaction for the insult offered the flag of the United States, and the injury done to our citizens on board the *Water Witch*, consented to a reference of this pecuniary demand of the United States and Paraguay Navigation Company to arbitration, where justice would be more likely done to the parties, than by an attempt to coerce the payment of such a claim with musket and sword.

It has been painful to observe, in the course of this examination, the ingenuity displayed in making so strong a case *prima facie* for the consideration of Congress and the executive government, founded upon *ex parte* representations of those most deeply interested in the claim, by a studied perversion of the laws and decrees of the Republic of Paraguay, and by the enormous, if not criminal exaggeration of the demands of this company, constantly growing larger by the skillful preparation of their accounts, and the studied and malignant assaults upon the President and people of Paraguay, and that too for the mere purpose of putting money into the pockets of those claimants.

It has always been the pride and glory of the government and citizens of the United States "to submit to nothing wrong" from any government or people, but, at the same time, demand of them "nothing but what is right;" and the day is far distant, as I sincerely hope, when East India fortunes are to be accumulated, with their approbation and sanction, by the plunder of feeble States, extorted from them at the cannon's mouth.

For the reasons above given, I am clearly of opinion that the award should be in favor of the Republic of Paraguay, and against the claimants, who have not established any right to damages upon their claim.

All of which is respectfully submitted,

C. JOHNSON.

WASHINGTON, August 10, 1860.

A W A R D.

And now, on this thirteenth day of August, Anno Domini one thousand eight hundred and sixty, the undersigned, Commissioners appointed and empowered respectively, as appears fully in the foregoing record, having heard and maturely considered the "proofs of the charges and defences of the contending parties," in respect of the "claims of the United States and Paraguay Navigation Company — a company composed of citizens of the United States — against the government of Paraguay," and having conferred together and deliberated upon the same, and upon the printed arguments of counsel thereupon, in virtue of the powers invested in them by the convention in this record recited and set forth, do hereby determine and award :

That the said claimants, "The United States and Paraguay Navigation Company," have not proved or established any right to damages upon their said claim against the Government of the Republic of Paraguay ; and that, upon the proofs aforesaid, the said government is not responsible to the said company in any damages or pecuniary compensation whatever, in all the premises.

In testimony whereof, the said Commissioners have hereunto subscribed their names and directed the attestation of the secretary and interpreter the day and year aforesaid.

C. JOHNSON,

Commissioner on the part of the United States.

JOSÉ BERGES,

Commissioner on the part of the Republic of Paraguay.

Attest :

SAMUEL WARD,

Secretary and Interpreter.

TRANSLATION OF THE DECREE RELATIVE TO
PATENTS, MONOPOLIES, AND EXCLUSIVE PRIVILEGES,

Referred to by the Claimants.

The Supreme Government, wishing to develop and encourage the industry and improvements of the Republic, and considering that one of the modes best calculated for this object is to define, explain and secure the conditions and rights of those who may come to co-operate in such useful purposes—decrees as follows:

Article 1. All and every discovery, or new invention, of every description of industry, is considered the property of its author; and the holder thereof is guaranteed by the forms and for the time herein specified.

Art. 2. Any improvement on any article made, shall be considered as a new invention.

Art. 3. Any person who may introduce into the country a foreign discovery, will enjoy the same advantages as though he were the inventor.

Art. 4. Whoever desires to obtain and secure the enjoyment of an industrial property [*propriedad industrial*] of the kind above mentioned, should—firstly, apply to the Secretary of the Supreme Government, and declare, in writing, whether the thing he introduces is an invention of his own, an improvement, or only an article he wishes to introduce into the country; secondly, he must deliver, closed and sealed, a true description of the principles, the means and process which constitute the invention, as also, plans, drawings, models, and everything in relation to the same, in order that the said sealed document may be opened at the moment the inventor receives his title of ownership.

Art. 5. The inventor will receive a patent, which will secure to him the ownership for the period of from five to ten years from the day of its date. The above time may be

extended, and other advantages allowed, if the importance of the invention be of such a nature as to deserve an extraordinary protection on the part of the government.

Art. 6. The privilege allowed to a patent of an invention already introduced into a foreign country, can not be extended to more than six months over the time of patent allowed in that country to the patentee.

Art. 7. The owner of a patent shall enjoy the exclusive privilege of the same, and of the fruits of his discovery, invention, or improvement, for which it was given him. And he may, therefore, sue in law any person who may infringe on his privilege, and, if the same be convicted, will not only suffer confiscation of property, but will be compelled to pay to the inventor the losses he may have suffered, and damages, besides a fine amounting to twenty per cent. on that sum, which will be applied to public expenditures.

Art. 8. But should it result that the suitor fails to prove his demand, after the act of sequestration has taken place, then, and in that event, the inventor shall be compelled to pay the defendant the losses and damages he may have occasioned, besides a fine of twenty per cent. on said amount, which will, likewise, be applied to public expenditures.

Art. 9. Every owner of a patent will enjoy the right of opening establishments or stores in various parts of the Republic, subject to such restrictions as may be previously communicated to him. He may, also, authorize others to apply and use his means, invention, or secret, and dispose generally of his patent, as he would of movable property.

Art. 10. Previous to the expiration of the patent, the description can only be communicated to any citizen who may wish to consult it: *provided*, that political or commercial reasons may not preclude the divulging of the secret: *provided, also*, that the inventor has not demanded and obtained, from the time of granting the patent, the guarantee of secrecy.

Art. 11. At the expiration of the patent, the discovery or invention will revert to the Republic, and the Supreme Government will cause to have published a description of same, and will permit the free use of such patent or invention, except in such cases where political or commercial reasons may call for restriction.

Art. 12. The above referred to descriptions will also be published, and the use of its workings declared free, when the proprietor of the patent may forfeit his rights, which can only take place in the following instances:

First—If it is proved that the inventor has omitted, or hidden, in said descriptions, any of its true means of working, or failed to explain them in a detailed, faithful, and circumstantial manner.

Second—If he should fail to communicate any new means of modification or improvement which he may discover at the time of soliciting the patent, or after obtaining the same; the said new means or improvement being guaranteed to him in the same manner as the invention.

Third—If it should be discovered that he obtained a patent for inventions already known and published, so as not to constitute his a new invention.

Fourth—If during the period of two years from the date of his patent, he should fail to work the same, except he may justify the cause of his inaction.

Fifth—If after obtaining a patent in the Republic, it is proved that he has taken out a like privilege in another country for the same patent, without previous permission to do so.

Sixth—The patent will also be revoked, the discovery made public, and the use of the same declared public, if the person who obtains the right of privileges enunciated in a patent should violate any of the obligations imposed on the inventor, as he is bound to submit to them as though he were the inventor himself.

Art. 13. When the objects, or articles of discovery, besides being of public utility, are of simple construction and easy of imitation, instead of an exclusive privilege of a patent, the inventor may ask for a compensation which may repay him.

Art. 14. The same thing may be done when the inventor prefers the honor to cede to the nation his discovery, in which case compensation will be adjusted according to the merits of his discovery and its utility, as soon as its importance is made known.

Art. 15. Any person who may discover or invent an improvement on an invention already patented will be entitled to a patent for the primitive use of the same, provided he does not infringe upon the principal patent; nor will the inventor of the latter be allowed to use the improvement of the former, without previous permission of the improver, or an understanding between them both.

Art. 16. The right of invention, (in case of a contest between parties claiming the same,) will be given to the party

who first made the application and deposits contemplated in article fourth.

That it may reach the knowledge of all, let it be published in the customary form and given to the National Repertory.

ASUNCION, *May* 20, 1845.

CARLOS ANTONIO LOPEZ.

ANDRES GIL,

Secretary of Supreme Government.

It is a true copy : NICOLOS VASQUEZ.

I, the undersigned, Consul of the United States of America for the port of Asuncion, Republic of Paraguay, do hereby certify that the foregoing is the true and genuine signature of his Excellency Señor Don Nicolos Vasquez, Minister for Foreign Affairs for this Republic, and as such is entitled to full faith and credit.

[SEAL OF
CONSULATE.]

Given under my hand, and the seal of the consulate, at Asuncion, this, the fourth day of October, A. D. 1859, and in the year of the Independence of the United States the eighty-fourth.

LOUIS BAMBERGER,

United States Consul.

TRANSLATION OF THE LETTER OF MR. GELLY,
REFERRED TO BY THE CLAIMANTS AS APPLYING THE
DECREE TO THE COMPANY'S ENTERPRISE.

RIO DE JANEIRO, *December 15, 1848.*

MY DEAR SIR: Your letter written from Asuncion under date of September 1st, and in which you make me some propositions in regard to the establishment of a school of practical agriculture in Paraguay, only came to my hand in this city, which will account for my not answering it before now. I have read attentively your project of establishing a school of practical agriculture in Paraguay, and the conditions under which you propose to make this establishment. I have no hesitation whatever in assuring you that the Supreme Government of the Republic will see the realization of this design with much pleasure, and that it will grant you all the protection and favor requisite for its prosperity. President Lopez, without precipitating the improvements of his country, desires, evidently, to promote them. It is my opinion that he will concede, with much pleasure, the four leagues of land which you ask *in perpetuo*, and that he will exempt the establishment of the school from all taxes and imposts, such as the tithes. It appears to me, that President Lopez will entirely abolish this impost as soon as the actual circumstances of the country are changed; the President knows that the impost of tithes is prejudicial and anti-economical as regards agriculturists and graziers, and only continues it temporarily. I presume that the school of agriculture which you propose to establish, would receive the young scholars of the country under such a regulation as would give the government of the Republic a voice with the director of the school. The proposition which you made to obtain an exclusive privilege or monopoly of some branches

can not be admitted by President Lopez; because, having issued the decree of 20th May, 1845, (a copy of which you have in regard to premiums and privileges to be granted to the inventors and introducers of machines, or even new means of bettering and facilitating production,) it would neither be just nor possible to make an exception in your favor. In the said decree President Lopez has resolved all questions which could arise in regard to privileges and premiums.

If you introduce into the country machines or new means of industry which the country does not now possess, this decree gives you the monopoly for ten years, at least, and you do not require a special concession.

You have visited the country twice, the first time as an especial agent of the Government of the United States, the second time as an explorer. You have enjoyed the sympathy and the estimation of the generality of the inhabitants of the whole country. You know, personally, the most distinguished members of all classes; you have been able to observe and judge all persons, and the advantages which the different productions of the country offer. Nothing is lacking to you, therefore, to direct with certainty and good success any kind of enterprise and speculation in Paraguay. In this country living is easy, commodious, and cheap; the population is numerous, moral, submissive, and industrious; hands cost but little, and the means of communication are facile. Paraguay will attract many speculators and working men as soon as the country shall be better known.

I have regretted much, that that timid and irresolute conduct of Mr. Buchanan has allowed the best opportunity of establishing good and close relations between the United States and Paraguay to pass away. I should be very content if I should see the Government of the United States forsake that timid policy which, up to the present time it has pursued in regard to Paraguay. If the independence of Paraguay, which now counts thirty-six years, which is so justified by the nature of things, and which has been recognised by all the Argentine Governments anterior to that of Señor Rosas, should be recognised by the United States, they could not only establish important relations, but such an act would contribute much to the establishment of peace in this part of the world.

The government of Paraguay has not sent a diplomatic mission to the United States, firstly, because you know that

in the actual condition of Paraguay we have nobody who could accept a diplomatic mission; and secondly, because, even if we had such a man, we should not send a mission whilst we remained in doubt as to its ultimate success.

In regard to the questions you put to me, I have no difficulty in expressing frankly my opinions in writing. You ask me, first, if in my opinion, it is convenient to establish, at this time, a manufacturing or commercial company in Paraguay? I doubt whether you could establish manufactories in Paraguay, in the extensive signification of that term, but we should expect, with good reason, great advantages from any kind of agricultural or commercial establishment. The country consumes much cotton goods, and even some woollen, but a manufactory to obtain these products would be very costly. However, the making of sugar on the banks of the Upper Parana in the department of San Cosme, or on the Upper Paraguay, near the towns of Concepcion, Salvador, and San Carlos, or in the neighborhood of the capital, would be very productive. The distillation of rum or ardent spirits from sugar cane would be equally useful. The article of tobacco, of so much consumption now in Europe, could compete with and rival that of Havana. The cotton, which is very good, would be equally productive, as also the extraction of vegetable oils.

Secondly. What, in my opinion, is the best branch of manufactories? With respect to manufactories, I have already manifested my opinion. All the branches which I have mentioned in my previous reply promise advantages; without doubt, the working of the iron mines, would, in my opinion, be the most advantageous.

Lastly, you ask me, if, in the case of the formation of a company, I would take part in it, and with what amount? Without doubt, I would take part in whatever company you may form, but I cannot say to exactly what amount. I am not rich, and the share which my fortune would allow me to take would be very small. I regard my countrymen in the same case as myself, but I am persuaded that they would all take such share as their fortunes would warrant.

If the government of the United States should recognize the independence of Paraguay, and employ effectually its good offices to arrange amicably the questions pending between Paraguay and Buenos Ayres, the United States would not only acquire a great and entirely American influence, but would greatly neutralize all European influence. If the

United States should continue to look with indifference upon these countries, the European Powers, which have already commenced to meddle in American questions, will have time to form relations and establish their influence. If, with the new President to be elected, the policy of the United States in reference to Paraguay should be changed, I would have particular satisfaction in seeing you charged with a diplomatic mission to Paraguay.

I wish you a happy journey, and request that you will write to me, addressing your letters care of Mr. Carter, No. 65 Rue de Oruidor, in case I should be absent.

I am your sincere friend and servant,

JUAN A. GELLY.

To ED. A. HOPKINS, Esq.

P. S. I send you herewith a copy of the report of Mr. Joseph Graham.

APPENDIX.

A.—Statement of Expenditures on account of

Dr.

Cost of steamer El Paraguay, including expense of voyage.....	\$90,031 05	
Disbursement account in South America, including passage to Asuncion.....	13,682 14	
Merchandise per El Paraguay and Kate & Alice	24,819 72	
Merchandise.....	891 18	
Duties in Paraguay.....	2,184 71	
Merchandise for schooner E. T. Blodget.....	2,564 43	
Expense on same at Buenos Ayres.....	56 83	
Cost of schooner E. T. Blodget.....	22,263 05	
Expended on same in South America.....	3,054 02	
Cost of steamer Asuncion.....	16,358 32	
Expended on same in South America.....	6,791 69	
Cost of steamer C. B. Stevens.....	5,963 77	
Cost of machinery, saw-mill, &c.....	1,650 01	
House in Calle del Comercio, (factory).....	2,500 75	
Tobacco, materials, tools, wages, &c.....	7,435 59	
Freight and duties on cigars.....	572 61	
Wages and passages of employes.....	37,192 74	
Expenses at Asuncion and Buenos Ayres to April 1, 1855.....	8,241 12	
Rent at Asuncion.....	469 81	
Store fixtures.....	268 50	
Removal of employes and effects from Paraguay	4,400 00	
Salaries, commissions, legal fees, &c., in the United States.....	15,791 26	
Profit and loss account in the United States..	1,508 07	
Expense at San Antonio.....	8,142 02	
Insurance.....	757 56	
Interest and commissions.....	4,224 07	
Loss on sale of bonds, first issue.....	57,875 00	
		339,690 03
To balance.....	213,073 16	
Sundry expenses, as per second supplementary account on file.....	7,503 95	
Difference between estimated value of steamers and the price at which they were sold.....	22,000 00	
Estimated final expenses in South America ..	14,500 00	
		257,077 11
To balance.....	254,489 61	
Sundry expenses, as per third supplementary account on file.....	3,208 96	
Compound interest on account to Aug. 7, 1858	88,626 61	
Amount carried forward.....		346,325 18

Expedition to Paraguay by U. S. & P. N. Co.

Cr.

Sale of steamer El Paraguay	\$6,285 86	
Pa-sages per do	383 62	
Cash returned by W. H. Hale	62 40	
Sale of coal at Montevideo	444 13	
Insurance on El Paraguay	35,751 43	
Sale of merchandise at Asuncion	21,448 17	
Merchandise taken to Corrientes	872 65	
Do.....do... Buenos Ayres	798 00	
Do.....remaining at Buenos Ayres	128 00	
Do.....per E. T. Blodgett, sold at do... ..	1,440 81	
Sale of schooner E. T. Blodgett, wrecked at the Tigre	5,571 31	
Earnings of steamer Asuncion	4,210 30	
Estimated value of the Asuncion at Buenos Ayres	\$30,000	
Less amount pledge	2,500	
	<hr/>	
Estimated value of the C. B. Stevens	27,500 00	
Do.....machinery	10,000 00	
	412 50	
Cigars on hand	7,563 33	
Safes	160 00	
	3,407 85	
	176 51	
By balance	213,073 16	
	<hr/>	
		<hr/>
		339,690 03
		<hr/>
Difference between estimated value of machi- nery, &c., as above, and price at which it sold, to which is added amount of sale of steamer Riachuelo	2,587 50	
By balance	254,489 61	
	<hr/>	
		257,077 11
		<hr/>

*A.—Statement of Expenditures on account of***Dr.**

Amount brought forward.....	346,325 18	
Compound interest to August 7, 1859.....	21,091 20	
Expenditures from August 7, 1858, to June 23, 1860, average due as cash August 7, 1859, as follows:		
Travelling expenses, legal fees, &c.....	5,774 89	
Office expenses.....	21 52	
Judgment in favor of Bank of Republic	1,408 66	
Balance of J. G. Thurber's account	500 00	
Loss on bonds, second issue.....	7,075 61	
Interest on above to date.....	20,323 31	
		402,250 37

Amount of claim, as above.....\$402,250 37

Expedition to Paraguay by U. S. & P. N. Co.

Cr.

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B.

Statement of the Treasurer of the United States and Paraguay Navigation Company of Providence, Rhode Island, March 16, 1855.

LIABILITIES IN THE UNITED STATES.	
Capital stock first issue, 100 shares of \$1,000 each.....	\$100,000 00
Do.....second do. 58....do....do.....	58,000 00
Do.....third do. 100....do....do.....	100,000 00
[NOTE.—The third issue of stock was all sent in June, 1854, to South America for sale. Its disposition is as yet unknown to the company.]	
Company bonds, payable 3 years from November, 1854, with interest from May, 1855, all sold.....	100,000 00
Book accounts and admitted claims due in the United States.....	3,103 10
	<hr/> 361,103 10 <hr/>
ASSETS IN THE UNITED STATES.	
Due from stockholders in South America in the employment of the company, and all others, on subscription to first and second issue of capital stock.....	\$6,785 00
Of this sum, it is believed, there has been paid to the general agent in South America, in services or otherwise.....	5,510 00
Leaving.....	\$1,275 00
Amount yet to be collected from sale of bonds.....	4,550 00
Merchandise at invoice value and expenses	360 00
Bills receivable, considered good.....	15,437 50
Cash, and cash items	2,232 04
Suspended bills receivable from bankrupt insurance companies, resulting from the loss of steamer El Paraguay, considered worthless	\$12,724 55
	<hr/> 23,854 54 <hr/>

Nearly, if not quite, this sum will be required to pay the wages, passage home, and incidental expenses of the employees in South America, for which the company is liable by contract.

The last statement from the company's books in South America was to the 30th of June, 1854. Soon after that date, the general cashier left Paraguay for Buenos Ayres, where he remained at the last advices.

It is impossible to prepare a statement, approximating to correctness, from any data in possession of the company in the United States, of

the amount actually invested in Paraguay, or for which the company is liable in South America.

WM. M. BAILEY, *Treasurer.*

UNITED STATES OF AMERICA, }
Rhode Island District, } ss.

Clerk's Office Circuit Court at Providence, March 19, 1855.

There personally appeared before me William M. Bailey, subscriber to the foregoing account, and made oath that it was in all respects just and true, according to the best of his knowledge and belief.

[L. s.] In testimony whereof, I have hereunto set the seal of said Court, and my hand, on the day and year last written.

HENRY PITMAN,
Clerk Circuit Court of the United States for Rhode Island District.

C.—Expense Account in Providence

Dr.

1855.			
July 3	H. A. L. Potter's salary, 3 mos. 10 dys..	\$333 33	
	do. expenses from New York..	13 00	
9	Expense of W. E. Hines and A. S. Gallup to Washington.....	110 00	
12	Whitney's bill of stationery	37 17	
			\$493 50
Oct. 17	W. E. Brown's board in Buenos Ayres, from June 13 to July 4.	33 00	
Nov 30	Sundry expenses, not enumerated.....	26 92	
	Bailey & Gallup's com. on disbursements	204 26	
			264 18
1856.			
Jan. 1	Sundry expenses not enumerated	92	
	Bailey & Gallup's commission on sales.	8 32	
	Repairing chronometer.....	7 00	
			16 24
Feb. 29	F. S. Rood	100 00	
	Notary fee for Mrs. Hines' deposition...	1 00	
			101 00
Mch 31	Sundry expenses to date.....	1 76	
June 18	Mrs. Carr's traveling expenses.....	5 00	
20	A. S. Gallup's expenses to Washington.	50 00	
	R. Greene's services and expenses in settling insurance on st'mr El Paraguay..	148 55	205 31
1857.			
June 11	Postage to date.....	7 72	
	Wm. M. Hales' salary from March 9, 1855, to January 9, 1856.....	1,291 67	
	S. G. Mason's service as secretary, from Dec. 13, 1855, to August 13, 1857....	500 00	
	Bailey & Gallup's salary for one year, ending January 2, 1856	2,500 00	
	Discount on 4 bonds, sold to S. G. Arnold, \$10 to 13 for \$2,000, at 80 p. c. dis.	1,600 00	
	Discount on 1 bond, sold to W. Greene, \$86 for \$1,125, at 50 per cent.....	562 50	
			6,461 89
			\$7,542 12
	To balance		\$7,503 95

E.

"The cigar factory, when closed, employing 115 operatives, who would make 300 per day each, or per month, twenty-four working days, 7,800—making the product of 115 operatives, 897,000 cigars per month. The cost of these cigars in Paraguay was \$2.50 to \$3.00 per thousand, and sold at the factory, for even inferior descriptions, at \$10 per thousand: being a clear profit of \$7 per thousand; equivalent to \$6,279 per month; and \$74,548 per year, and for ten years, \$745,810.

"These cigars, made by their unexperienced operatives, sold in the United States at \$20 and \$30 per thousand, of the highest grades and price; the whole was readily sold, and a demand for more than we could supply, and even as high as \$35 per thousand was offered. Say that these cigars cost in Paraguay \$4 per thousand, and \$4 per thousand for freight and duties, (ad valorem,) they would yield our company in the United States a net profit of \$22 per thousand; would have yielded \$236,808 per annum; for ten years, \$2,368,080."

F.

PROVIDENCE, September 27, 1858.

HON. LEWIS CASS, *Secretary of State*:

Dear Sir: Our gentlemen of the Paraguay Company find themselves unable, "with a fair regard to their interests, in their judgment," "to moderate their demand." From the first, they have not expected to be restored to a position pecuniarily equivalent to that from which Lopez displaced them; but they have trusted that their government would obtain for them that imperfect measure of justice for which they asked.

With the force detailed for the expedition, a simple demand will bring from the treasurer of Lopez the amount of our claim, and in the future American commerce and enterprise in South America will meet with no obstructions from the partial despotism of any of its governments.

* * * * *

C. S. BRADLEY.

G.

They had also a brick machine of the largest size, the product of which would be 10,000 bricks each day. "The cost (by prices in the United States) would be \$4 per thousand; the value in Paraguay was \$20 per thousand, and upwards. This would leave a profit of \$16 per thousand, or \$160 per day for the single machine. Allow 200 working days per annum, and we have \$32,000 per annum, and for ten years, \$320,000."

AN ACT

To carry into Effect a Convention between the United States and the Republic of Paraguay.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States, by and with the advice and consent of the Senate, shall appoint a commissioner, whose duty it shall be, conjointly with a commissioner appointed by the government of Paraguay, to investigate, adjust, and determine the amount of the claims of the "United States and Paraguay Navigation Company" against the government of Paraguay.

SEC. 2. *And be it further enacted,* That the President of the United States, by and with the advice and consent of the Senate, shall appoint a secretary to said commissioner, in behalf of the United States, versed in the English and Spanish languages.

SEC. 3. *And be it further enacted,* That the said commissioner on the part of the United States, in conjunction with the commissioner on the part of Paraguay, shall be, and he is hereby, authorized to make all needful rules and regulations for conducting the business of their said commission; such rules and regulations not contravening the Constitution of the United States, the provisions of this act, or the provisions of the said convention.

SEC. 4. *And be it further enacted,* That the compensation of the respective officers, for whose appointment provision is made by this act, shall be as follows: To the commissioner, in full for his services, the sum of fifteen hundred dollars; to the secretary and interpreter, in full for his services, the sum of one thousand dollars; and the President of the United States shall be, and is hereby, authorized to make such provision for the contingent expenses of the said commission on the part of the United States as shall to him appear reasonable and proper; and the said compensations and expenses, and likewise all that part of the compensation and expenses of the umpire under said convention, which is required thereby to be defrayed by the United States, shall be paid out of any money in the treasury not otherwise appropriated.

SEC. 5. *And be it further enacted,* That the Secretary of State is hereby authorized and required to transmit to the said commission such papers or records, relating to the business before the said commission, as he may deem proper, or as may be called for by the commissioners; and, at the termination of the commission, all the records, documents, and

all other papers, which have been before the commissioners, or in possession of its secretary, shall be deposited in the Department of State: *Provided*, That this section shall not be so construed as to prevent the commissioner on the part of Paraguay from depositing in the said Department certified copies or duplicates of papers, filed on behalf of his government, instead of originals.

SEC. 6. *And be it further enacted*, That the amount paid out of the treasury, pursuant to the provisions of this act for carrying the said convention into effect, shall be retained by the United States out of the money that may, pursuant to the terms of said convention, be received from Paraguay, and that the same be returned to the treasury of the United States.

APPROVED May 16, 1860.

*Convention between the United States of America and the
Republic of Paraguay.*

[Signed at Asuncion, February 4, 1860; ratified by the President of the United States, March 7, 1860; exchanged at Washington, March 7, 1860; proclaimed by the President of the United States, March 12, 1860.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA: }
A Proclamation. }

Whereas, a Convention relating to the claims of the "United States and Paraguay Navigation Company," against the Paraguayan Government, was concluded between the United States of America and the Republic of Paraguay, and was signed by their respective plenipotentiaries at Asuncion on the fourth day of February, one thousand eight hundred and fifty-nine, the original of which convention being in the English and Spanish languages is, word for word, as follows:

Special Convention between the United States of America and the Republic of Paraguay, relating to the claims of the "United States and Paraguayan Navigation Company," against the Paraguayan Government.

His Excellency the President of the United States of America, and his Excellency the President of the Republic of Paraguay, desiring to remove every cause that might interfere with the good understanding and harmony, for a time so unhappily interrupted, between the two nations, and now so happily restored, and which it is so much for their interest to maintain; and desiring for this purpose to come to a definite understanding, equally just and honorable to both nations, as to the mode of settling a pending question of the said claims of the "United States and Paraguayan Navigation Company"—a company composed of citizens of the United States—against the government of Paraguay, have agreed to refer the same to a special and respectable commission, to be organized and regu-

Convencion especial entre la Republica del Paraguay y los Estados Unidos de America relativa á las reclamaciones de la "Compañía de Navegacion de los Estados Unidos y del Paraguay," contra el Gobierno Paraguayo.

Su Excelencia el Señor Presidente de la Republica del Paraguay y su Excelencia el Señor Presidente de los Estados Unidos de America, deseando remover toda causa que pueda comprometer la buena inteligencia y armonia, por un momento tan desgraciadamente interrumpidas entre las dos naciones, y ahora tan felizmente restablecidas, y que tanto les interesa mantener, y deseando á este fin llegar á un arreglo definitivo igualmente justo y honorable para ambas naciones en cuanto á la manera de concluir la cuestion pendiente de las referidas reclamaciones contra el gobierno del Paraguay de la "Compañía de Navegacion de los Estados Unidos y del Paraguay," compañía compuesta de ciudadanos de los Estados Unidos de America, han convenido someter dicho arreglo á una comis-

lated by the convention hereby established between the two high contracting parties; and for this purpose they have appointed and conferred full powers, respectively, to wit:

His Excellency the President of the United States of America upon James B. Bowlin, a special commissioner of the said United States of America, specifically charged and empowered for this purpose; and his Excellency the President of the Republic of Paraguay upon Señor Nicolas Vasquez, Secretary of State and Minister of Foreign Affairs of the said Republic of Paraguay; who, after exchanging their full powers, which were found in good and proper form, agreed upon the following articles:

ARTICLE I.

The government of the Republic of Paraguay binds itself for the responsibility in favor of the "United States and Paraguay Navigation Company," which may result from the decree of commissioners, who, it is agreed, shall be appointed as follows:

ARTICLE II.

The two high contracting parties, appreciating the difficulty of agreeing upon the amount of the reclamations to which the said company may be entitled, and being convinced that a commission is the only equitable and honorable method by which the two countries can arrive at a perfect understanding thereof, hereby covenant to adjust them accordingly by a loyal commission. To determine the amount of said reclamations, it is, therefore, agreed to constitute such a commission, whose decision shall be binding, in the following manner:

The government of the United States of America shall appoint one commissioner, and the government of Paraguay shall appoint

ion especial, respetable que será organizada y regida por la presente convencion entre las dos altas partes contratantes; y para este fin han nombrado y conferido plenos poderes respectivamente a saber:

Su Excelencia el Presidente de la Republica del Paraguay al ciudadano Paraguayo, Nicolas Vasquez, Secretario de Estado y Ministro de Relaciones Exteriores de la dicha Republica del Paraguay, y Su Excelencia el Presidente de los Estados Unidos de America al Señor James B. Bowlin, comisionado especial de los dichos Estados Unidos de America—especialmente encargado y apoderado á este fin, quienes despues de cambiar sus plenos poderes que encontraron en buena y debida forma convinieron en los articulos siguientes:

ARTICULO I.

El gobierno de la Republica del Paraguay se obliga á la responsabilidad que á favor de la "Compañia de Navegacion de los Estados Unidos del Paraguay," resulte del fallo de comisionados que se nombrarán en la forma convenida en el siguiente:

ARTICULO II.

Las dos altas partes contratantes, apreciando la dificultad de acordarse sobre el monto de las reclamaciones á que dicha compañía pueda ser acreedora, y estando convencidas de que una comision es el único medio equitativo y honorable por el cual los dos países puedan arriivar á una perfecta inteligencia sobre este punto, han convenido por la presente ajustarlas en conformidad por una comision leal. Para determinar el importe de dichas reclamaciones es pues convenido constituir tal comision, cuya decision sea obligatoria en la forma siguiente:

El gobierno del Paraguay nombrará un comisionado, y el gobierno de los Estados Unidos de America nombrará otro, y estos dos, en caso

another; and these two, in case of disagreement, shall appoint a third, said appointment to devolve upon a person of loyalty and impartiality, with the condition that, in case of difference between the commissioners in the choice of an umpire, the diplomatic representatives of Russia and Prussia, accredited to the government of the United States of America, at the city of Washington, may select such umpire.

The two commissioners named in the said manner shall meet in the city of Washington, to investigate, adjust, and determine the amount of the claims of the above-mentioned company, upon sufficient proofs of the charges and defences of the contending parties.

ARTICLE III.

The said commissioners, before entering upon their duties, shall take an oath before some judge of the United States of America that they will fairly and impartially investigate the said claims, and a just decision thereupon render, to the best of their judgment and ability.

ARTICLE IV.

The said commissioners shall assemble, within one year after the ratification of the "treaty of friendship, commerce, and navigation" this day celebrated at the city of Assumption between the two high contracting parties, at the city of Washington in the United States of America, and shall continue in session for a period not exceeding three months, within which, if they come to an agreement, their decision shall be proclaimed; and in case of disagreement, they shall proceed to the appointment of an umpire as already agreed.

ARTICLE V.

The government of Paraguay hereby binds itself to pay to the government of the United States of America, in the city of Assumption,

de discordia, nombraran un tercero, debiendo recaer este nombramiento en persona leal é imparcial, con calidad de que en caso de desacuerdo de los comisionados en la eleccion de un tercero en discordia los representantes diplomaticos de Rusia y Prussia acreditados cerca del gobierno de los Estados Unidos de America en la ciudad de Washington podran elegir á tal tercero en discordia.

Los dos comisionados nombrados en la forma referida se reuniran en la ciudad de Washington para investigar, ajustar y determinar el monto de las reclamaciones de la mencionada compania sobre pruebas bastantes de los cargos y descargos de las partes contenderas.

ARTICULO III.

Los dichos comisionados, antes de entrar en sus funciones, prestarán juramento ante algun juez de los Estados Unidos de America de que investigarán leal é imparcialmente las expresadas reclamaciones y darán sobre ellas una decision justa con su mejor juicio y habilidad.

ARTICULO IV.

Los dichos comisionados se reuniran en la ciudad de Washington dentro de un año despues de la ratification del "tratado de amistad, comercio, y navegacion," celebrado en esta fecha en la ciudad de la Asuncion entre las dos altas partas contratantes, y continuarán en session, por un periodo que no exceda de tres meses, dentro del cual si fallaran de acuerdo, su decision será proclamada, y en caso de discordia se procederá al nombramiento de un tercero, como queda convenido.

ARTICULO V.

El gobierno del Paraguay por la presente se obliga á abonar al gobierno de los Estados Unidos de America en la Asuncion del Paraguay,

Paraguay, thirty days after presentation to the government of the republic, the draft which that of the United States of America shall issue for the amount for which, the two commissioners concurring, or by the umpire, shall declare it responsible to the said company.

ARTICLE VI.

Each of the high contracting parties shall compensate the commissioner it may appoint the sum of money he may stipulate for his services, either by instalments or at the expiration of his task. In case of the appointment of an umpire, the amount of his remuneration shall be equally borne by both contracting parties.

ARTICLE VII.

The present convention shall be ratified within fifteen months, or earlier if possible, by the government of the United States of America and by the President of the Republic of Paraguay within twelve days from this date. The exchange of ratifications shall take place in the city of Washington.

In faith of which, and in virtue of our full powers, we have signed the present convention in English and Spanish, and have thereunto set our respective seals.

Done at Assumption, this fourth day of February, in the year of our Lord one thousand eight hundred and fifty-nine, being the eighty-third year of the Independence of the United States of America, and the forty-seventh of that of Paraguay.

JAMES B. BOWLIN, [Seal.]
NICOLAS VASQUEZ, [Seal.]

dentro de treinta dias de presentarse al gobierno de la republica la letra que el de los Estados Unidos de America llegue á girar sobre la suma que los comisionados de acuerdo, ó por un tercero en discordia, le declarasen responsable á dicha compañía.

ARTICULO VI.

Cada una de las altas partes contratantes, compensará al comisionado que llegue á nombrar con la suma de dinero que pediere por sus servicios sea á plazos convenientes ó en conclusion de sus tareas. En caso de nombrarse un tercero en discordia le pagarán por mitad sus honorarios ambas partes contratantes.

ARTICULO VII.

La presente convencion será ratificada dentro de doce dias por su excelencia el Señor Presidente de la Republica del Paraguay, y por el gobierno de los Estados Unidos de America dentro de quince meses de esta fecha, ó antes si fuera posible. El cambio de las ratificaciones tendrá lugar en la ciudad de Washington.

En fé de lo cual, y en virtud de nuestros plenos poderes, hemos firmado la presente convencion en Español y en Inglés, y la hemos sellado con nuestros respectivos sellos.

Fecho en la Asuncion el dia cuatro de Febrero en el año de Nuestro Señor de mil ochientos cincuenta y nueve, el cuadragésimo sétimo de la Independencia Nacional del Paraguay y el octagesimo tercio de la de los Estados Unidos de America.

[Seal.] NICOLAS VASQUEZ,
[Seal.] JAMES B. BOWLIN.

And whereas, the said convention has been duly ratified on both parts, and the respective ratifications of the same were exchanged at Washington on the seventh instant, by Lewis Cass, Secretary of State of the

United States, and Señor Don José Bergea, Special Commissioner of the Republic of Paraguay, on the part of their respective governments :

Now, therefore, be it known, that I, JAMES BUCHANAN, President of the United States of America, have caused the said convention to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this twelfth day of March, in the year of our Lord one thousand eight hundred and sixty, and of [L. s.] the Independence of the United States of America the eighty-fourth.

JAMES BUCHANAN.

By the President:

LEW. CASS, *Secretary of State.*

Paraguay Co. c

200



